Supr... U.S.

No. —— 99 898 NOV 26 1999

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IN THE

Supreme Court of the United States

CITY OF CHICAGO, *et al.*,
Petitioners,

v.

DONNA E. SHALALA, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Congress may, consistent with the Fifth Amendment's requirement of equal protection under law, disqualify noncitizens lawfully residing in the United States from receiving federally funded welfare benefits that noncitizens help to fund through their taxes on the same basis as citizens.

PARTIES TO THE PROCEEDING

The municipal petitioners are the City of Chicago; its Mayor, Richard M. Daley; its Commissioner of Human Services, Daniel Alvarez, Sr.; its Commissioner of Health, Sheila Lyne; its Commissioner on Aging, Anna L. Willis; and the Special Assistant to the Mayor for People With Disabilities, Lawrence J. Gorski. The intervening petitioners are Morris Isaak Sinelnikov, Maximina Carmona, Ignacia Orozko, Fung Yee Hong, the Organization of the Northeast, and two certified classes: first, a class composed of all Illinois residents who (a) are lawfully admitted permanent residents of the United States; and (b) on or after August 22, 1996, receive or received, or made a claim or have a claim pending for benefits under the Supplemental Security Income Program, and (c) had or have had their benefits terminated or their claim for benefits denied on the basis of their noncitizenship; and second, a class composed of all Illinois residents who (a) are lawfully admitted permanent residents of the United States, and (b) on or after August 22, 1996, received or receive, or made or will make an application for benefits under one or more of these programs: Food Stamps, Temporary Assistance for Needy Families, Medicaid, and Social Services, and (c) had, have, or will have their benefits denied or terminated on the basis of their noncitizenship. The respondents are Donna E. Shalala, Secretary of Health and Human Services; Kenneth S. Apfel, Commissioner of Social Security; Dan Glickman, Secretary of Agriculture; and Nancy-Ann Min DeParle, Administrator, Health Care Financing Administration.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals of the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (App., *infra* at 1a-21a) is reported at 189 F.3d 598 (7th Cir. 1999). The opinion of the district court (App., *infra* at 22a-61a) is unreported.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on August 31, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Fifth Amendment provides, in pertinent part: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." U.S. Const., amend. V. The pertinent provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as subsequently amended, popularly known as the "Welfare Reform Act," are set out in the appendix (App., *infra* at 65a-93a).

STATEMENT

By enacting the Welfare Reform Act, Congress, for the first time, rendered large classes of noncitizens who are lawful permanent residents of the United States ineligible for federally funded welfare benefits. See Pub. L. No. 104-113, tit. iv. §§ 402-03, 110 Stat. 2262-67 (1996). Specifically, Section 402(a)(3) of the Act added a citizenship requirement applicable to most persons seeking benefits under the Supplemental Security Income Program, 42 U.S.C. § 1381 *et seq.* ("SSI"), a federal assistance program for impoverished individuals who have attained age 65 or are disabled; and the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*, a federally funded program to supplement the food purchasing power of eligible low income households. See 8 U.S.C. § 1612 (Supp. II 1996); see also App., *infra* at 71a-82a.[1] In addition,

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[1] The only exceptions are for the first seven years after entry into the country for refugees, asylees, and those whose deportation is withheld, as well as for certain Cuban, Haitian, and Amerasian entrants, veterans, those on active duty, their spouses and unmarried dependent children, and legal permanent residents who are credited with 40 quarters of covered employment. See App., *infra* at 71a-74a. The Act contained a limited grandfather clause for persons receiving SSI or Food Stamps on August 22, 1996, which was later amended to preserve the benefits of those noncitizens until September 30, 1998. App., *infra* at 74a-75a. Food Stamps for non-

Section 403 of the Act renders most noncitizens entering the country on or after August 22, 1996, ineligible for any "Federal means-tested public benefit for five years from their date of entry." See 8 U.S.C. § 1613 (Supp. II 1996); see also App., *infra* at 83a. As a result, most noncitizens may not receive benefits under the Temporary Assistance for Needy Families program, 42 U.S.C. §§ 601 *et seq.* ("TANF"), a federally funded program designed to provide temporary cash assistance to impoverished families; as well as the Medicaid program, 42 U.S.C. §§ 1396 *et seq.*, a federal program to assist states that reimburse the costs of medical treatment for impoverished persons.[2]

Congress later restored eligibility for certain benefits to some of the lawful permanent residents excluded by the Welfare Reform Act. The Balanced Budget Act of 1997, Pub. L. No. 105-33, tit. VII(a), 111 Stat. 216-17 (1997), restored SSI benefits to legal permanent residents residing in this country as of August 22, 1996, and who either were receiving SSI benefits as of that date, or who seek benefits after that on the basis of blindness or dis-

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citizens properly receiving them as of August 22, 1996, were also preserved but for up to one year. App., *infra* at 75a.

[2] This disqualification is inapplicable to refugees, asylees, persons whose deportation is withheld, certian Cuban, Haitian, and Amerasian immigrants, and noncitizens who are veterans who are on active duty and their dependents. App., *infra* at 83a-84a. This disqualification also does not apply to emergency medical assistance under Medicaid, Emergency Disaster Relief, specified school lunch, child nutrition, immunization, foster care and adoption assistance, educational or job training programs, and other specified emergency benefits. App., *infra* at 84a-86a. After this lawsuit was filed, the respondents confirmed that both TANF and Medicaid are "Federal means-tested public benefits" subject to the five-year mandatory disqualification contained in Section 403 of the Welfare Reform Act, but also ruled that benefits under the Social Services Block Grant program are not subject to that disqualification. See 62 Fed. Reg. 45,256, 45,257 (Aug. 26, 1997); 62 Fed. Reg. 61,344, 61,349 (Nov. 17, 1997). Accordingly, all claims relating to the SSBG program have been mooted.

ability. App., *infra* at 76a. Subsequently, in the Agricultural Research Extension and Education Reform Act of 1997, Pub. L. No. 105-185, §§ 504, 506, 507, 112 Stat. 578-79 (1998), Congress restored Food Stamp eligibility to legal permanent residents who were lawfully residing in this country as of August 22, 1996, and who are disabled, 65 years of age or older, or under 18 years of age. App., *infra* at 92a-93a. Thus, at present, noncitizens who are legal permanent residents and who enter the United States after August 22, 1996, are not eligible for any SSI or Food Stamp benefits. Even those who entered this country before August 22, 1996, but who were not receiving SSI benefits on that date, can receive SSI benefits only if they are or become blind or disabled; and they receive Food Stamps only if they are disabled, elderly, or children.

On July 10, 1997, the City of Chicago; its Mayor; its Commissioners of Human Services, Health, and Aging; and the Special Assistant to the Mayor responsible for the Mayor's Office for People With Disabilities filed a complaint alleging that the provisions of the Welfare Reform Act that disqualify noncitizens lawfully in the United States from federally funded welfare programs violate the equal protection component of the Fifth Amendment's Due Process Clause. App., *infra* at 5a.[3] Subsequently, a number of legal permanent residents of the United States, and an organization of ethnic associations whose members are legal permanent residents, were granted leave to intervene as plaintiffs. App., *infra* at 5a.[4]

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[3] The complaint also asserted a claim under the Older Americans Act. App., *infra* at 5a. The district court held that the municipal petitioners lacked standing to assert that claim, see App., *infra* at 6a, and it was abandoned on appeal. See App., *infra* at 6a at n.8.

[4] The district court certified two classes of intervenors. One class comprised Illinois residents who are lawful permanent residents

The district court dismissed the complaint. The court concluded that the provisions of the Welfare Reform Act that discriminate against noncitizens should be upheld as long as they are supported by a rational basis. App., *infra* at 43a. The district court also concluded that these provisions satisfied the rational basis test, since "there appears to be a logical connection between the means (restricting aliens' access to welfare programs) and Congress's end (fostering self-reliance and easing the burden on the welfare system)." *App., infra* at 46a.[5]

The court of appeals affirmed.[6] While acknowledging that state laws discriminating against noncitizens seeking

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of the United States who had their SSI benefits terminated, or who had a claim for SSI benefits denied, after August 22, 1996, pursuant to the Welfare Reform Act; the other comprised those who, after August 22, 1996, received, applied for, or will apply for Food Stamps, TANF, Medicaid, or benefits under the Social Services Block Grant, and who have had or will have their benefits terminated or their applications denied pursuant to the provisions of the Welfare Reform Act. App., *infra* at 5a n.7.

[5] The district court also discussed various procedural defenses that had been forwarded, although it ultimately concluded that none of them prevented it from reaching the merits. First, the district court noted that the City of Chicago's standing had been questioned, but the court found it unnecessary to decide whether the municipal petitioners had standing to challenge the Welfare Reform Act, since the intervenors' standing was unquestioned. App., *infra* at 31a. It also held that some of the intervenors could not pursue their claims by virtue of the judgments in two prior cases in which different aspects of the Welfare Reform Act had been challenged by classes that included some of the intervenors or by plaintiffs whose interests were so closely aligned with the interests of some of the intervenors as to fall within the doctrine of "virtual representation." App., *infra* at 36a. Nevertheless the court reached the merits on the claims of those intervenors who were not barred by the prior adjudications. App., *infra*, at 43a.

[6] Much like the district court, the court of appeals found it unnecessary to adjudicate the procedural defenses, since there was no dispute that at least some of the intervenors had standing to

welfare benefits are subject to heightened judicial scrutiny under the Equal Protection Clause, the court of appeals, relying on this Court's decision in *Mathews v. Diaz*, 426 U.S. 67 (1976), concluded that federal legislation discriminating against noncitizens should be upheld as long as it is not "wholly irrational." App., *infra* at 9a. The court of appeals acknowledged that this Court had held in *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995), that the Fifth Amendment's Due Process Clause generally imposes the same standards on federal legislation that the Equal Protection Clause imposes on state and local governments, but the court refused to apply that holding on the ground that "*Adarand* itself acknowledged an exception to this general rule for cases in which special deference to the political branches of the federal government is appropriate." App., *infra* at 10a. Applying the rational basis test, the court concluded that the statute was reasonably related to four legitimate government interests—the interest in "encouraging aliens' self-sufficiency," App., *infra* at 14a-15a; "the legitimate governmental interest of discouraging immigration that is motivated by the availability of welfare benefits," App., *infra* at 16a; the interest in "reducing the rising cost of operating federal benefits programs," App., *infra* at 16a; and "the legitimate governmental purpose of encouraging naturalization." App., *infra* at 17a.

REASONS FOR GRANTING THE PETITION

In *Graham v. Richardson*, 403 U.S. 365 (1971), the Court held that the Fourteenth Amendment's Equal Protection Clause forbids state and local governments from discriminating against noncitizens when establishing eligi-

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challenge the constitutionality of the Act and were not barred by prior judgments. See App., *infra* at 7a. Indeed even the respondents, in their brief in the court of appeals, urged that court to reach the merits. See Brief for the Appellees at 15-16, 20-21.

bility rules for welfare benefits. The Court reasoned that noncitizens are a "discrete and insular minority" deserving of special judicial protection against legislative overreaching, and concluded that there was no constitutionally acceptable reason to deprive noncitizens of equal access to the social safety net that they help to fund with their taxes on the same basis as citizens. See *id.* at 371-76.

In the Welfare Reform Act, Congress did precisely what the state and local governments are forbidden to do under *Graham*—it disqualified large numbers of noncitizens lawfully residing in this country, as well as virtually all noncitizens lawfully entering the country after the Act's effective date, from eligibility for federally funded welfare benefits. Of course, the Fourteenth Amendment does not apply to federal legislation, but the Fifth Amendment's Due Process Clause does. And after this Court's holding in *Adarand* that the Fifth Amendment imposes the same restrictions on Congress as the Equal Protection Clause imposes on state and local governments, plainly the rationale of *Graham* should apply to federal welfare legislation.

To be sure, Congress enjoys the power, not available to state and local governments, to regulate immigration and naturalization. That power simply does not save the Welfare Reform Act. The federal immigration power embraces "a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant can remain." *DeCanas v. Bica*, 424 U.S. 351, 355 (1976). The Welfare Reform Act, however, affects no one's immigration status and makes no one, no matter how destitute, deportable for that reason. Congress's refusal to devote federal resources to caring for a relatively powerless discrete and insular minority may be politically understandable, but it is an exercise of its power

over spending, not immigration. And of course shifting the financial burdens associated with the continued presence of distitute noncitizens in the country onto state and local governments creates its own problem—in the form of an unfunded mandate.

To reach its contrary conclusion, the court of appeals relied on broad language in *Mathews v. Diaz*, 426 U.S. 67 (1976), the only decision in which this Court has ever relied on federal immigration powers to uphold legislation affecting no one's immigration status. There, the Court determined that Congress could require five years of residency in the country before noncitizens can receive Medicare benefits. We have no quarrel with the result in *Diaz*. Medicare is an insurance program. It is only appropriate —and actuarially sound—to require noncitizens to reside in this country and contribute to the program for some substantial period before they may receive the benefits of this insurance fund. Seen in this light, *Diaz* should not be understood to rest on the federal immigration power, but rather on the long-settled rule that certain benefits can be denied to noncitizens when there is a "special public interest" that demands that such benefits not be made available to citizens and noncitizens on an equal footing. See *Graham*, 403 U.S. at 372. Permitting noncitizens immediate access to an insurance trust fund that they have not helped to build surely falls within that rule. But restricting access to welfare benefits funded by current tax revenues is not permissible under this doctrine, as *Graham* itself holds.

Nevertheless, *Diaz* describes congressional authority over noncitizens so broadly as to apparently condone virtually any federal legislation that discriminates against noncitizens in the provision of government services or benefits. See 426 U.S. at 79-84. Because of the breadth

of this language, the lower courts have been unanimous in rejecting any and all efforts to challenge federal legislation that discriminates against noncitizens but affects no one's immigration status. Accordingly, unless this Court now limits the broadest language in *Diaz*, Congress will receive effectively unfettered discretion to enact progressively more onerous laws discriminating against noncitizens in the provision of federally funded benefits, while doing nothing to relieve state and local governments from the burdens imposed upon them by noncitizens whose deportation Congress is unwilling to authorize. That type of discrimination is repulsive. The federal government, after all, is solely responsible for the presence of lawful noncitizens in the country. It should not be allowed to shirk all responsibility for their welfare. After *Adarand*, there is no basis to refuse to apply the holding of *Graham* to Congress—equal protection principles forbid any legislative body from balancing its budget on the backs of a discrete and insular minority. Plenary review is therefore warranted.

1. In *Graham*, the Court held that classifications based on alienage, like those based on nationality or race, "are inherently suspect and subject to close judicial scrutiny." 403 U.S. at 371-72 (footnotes omitted). This is because "[a]liens as a class are a prime example of a 'discrete and insular' minority for whom such heightened judicial solicitude is appropriate." *Id.* at 372 (citation omitted). As the Court subsequently observed, this rule is "deemed necessary since aliens—pending their eligibility for citizenship —have no direct voice in the political processes." *Foley v. Connelie*, 435 U.S. 291, 294 (1978).[7]

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[7] As the court of appeals observed, the Welfare Reform Act does not discriminate against all noncitizens, since it excepts certain classes of noncitizens from its prohibitions. See App., *infra* at 19a. That, however, is not a basis to refuse to apply strict scrutiny. In

Of course, the Court in *Graham* did not reach the precise question presented by this case, noting that it had "no occasion to decide whether Congress, in the exercise of the immigration and naturalization power, could itself enact a statute imposing on aliens a uniform nationwide residency requirement as a condition of federally funded welfare benefits." 403 U.S. at 382 n.14. Moreover, the precise scope of equal protection limitations on federal legislation was not yet settled at the time *Graham* was decided. In *Hampton v. Mow Sun Wong*, 425 U.S. 88 (1976), for example, the Court opined that the Fourteenth and Fifth Amendments "are not always coextensive," and added that under its precedents only "when a federal rule is applicable to only a limited territory, such as the District of Columbia, or an insular possession, and when there is no special national interest involved" has "the Due Process Clause been construed as having the same significance as the Equal Protection Clause." *Id.* at 100. But after *Adarand*, any effort to limit the scope of *Graham* to state and local legislation is surely suspect. In that case, the Court unambiguously held that "the Constitution imposes upon federal, state and local governmental actors the same obligation to respect the personal right to equal protection of the laws." 515 U.S. at 231-32.

Graham itself, for example, one of the state laws at issue permitted noncitizens to receive welfare benefits if they satisfied a durational residency requirement. See 403 U.S. at 367. In *Nyquist v. Mauclet*, 432 U.S. 1 (1977), the Court, relying on this aspect of *Graham*, invalidated a state statute that disqualified noncitizens from eligibility for educational benefits if they were eligible to naturalize but had not applied for citizenship, or had not affirmed their intent to naturalize when eligible. The Court applied strict scrutiny because the statute "is directed at aliens and . . . only aliens are harmed by it. The fact that the statute is not an absolute bar does not mean that it does not discriminate against aliens." *Id.* at 9 (footnote omitted).

There may, of course, be some other basis—besides the now-discredited notion that the federal government may provide only a limited equal protection to all persons—to differentiate between federal power and the power of state and local governments. Indeed, in *Adarand* the Court acknowledged that there are some circumstances in which it had found "special deference to the political branches of the Federal Government to be appropriate." 515 U.S. at 217-18, and it even cited the "federal power over immigration" as one example. *Id.* at 218. Of course, any exercise of that power is necessarily directed at noncitizens, since only they can be deported or excluded from this country, or denied naturalization. Thus, the mere fact that laws on those subjects are directed at only noncitizens poses no equal protection problem. This case, however, does not fall within that principle. There is no logical or necessary reason to direct welfare eligibility restrictions at only noncitizens—Congress must balance human needs against the interest in conserving public resources and encouraging self-sufficiency for citizens and noncitizens alike.

It is true, as the court of appeals observed, that by rendering noncitizens ineligible for federal welfare benefits, Congress has created an additional incentive for noncitizens to be self-sufficient; discouraged immigration motivated by the availability of welfare benefits; reduced the cost of federal benefits programs; and encouraged naturalization. But none of these purposes is sufficient to invoke congressional immigration powers, as *Graham* explains. In that case, the states argued that because the Social Security Act required only that the states pay federally funded benefits to citizens, it authorized the states to discriminate against noncitizens. See 403 U.S. at 380. Yet the Court forcefully rejected the argument that the state laws at issue could be sustained on that basis: "Congress does

not have the power to authorize the individual States to violate the Equal Protection Clause." *Id.* at 382. See also *Saenz v. Roe*, 119 S. Ct. 1518, 1528-29 (1999). But if Congress had plenary power to do anything that promotes noncitizens' self-sufficiency, deters immigration, encourages naturalization, or reduces governmental expenses attributable to noncitizens, the Court would have reached a different result in *Graham*. Under *Graham*, congressional power to control immigration will not sustain a measure simply because it denies persons access to federally funded benefits based on alienage.

Moreover, laws that affect no one's immigration status should not be defended by reference to Congress's right to control the borders. As *Graham* explained, federal immigration powers extend to "determining what aliens shall be admitted to the United States, the period they remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization." 403 U.S. at 377. Similarly, in *DeCanas v. Bica*, the Court defined the federal immigration power as "essentially a determination of who should and should not be admitted into the country, and the conditions under which a legal entrant may remain." 424 U.S. at 355.[8] The Welfare Reform Act, however, does not affect the terms and conditions on which anyone can enter or remain in this country, or anyone's eligibility to naturalize. While we do not doubt congressional authority to authorize deportation of noncitizens should they become incapable of supporting themselves, Congress has declined to do so. The Welfare Reform Act does not render anyone deportable or ineligible for naturalization: Congress was simply not concerned with such

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[8] The Constitution itself grants Congress only limited power over noncitizens lawfully in the country; it grants Congress authority "[t]o establish a uniform Rule of Naturalization." U.S. Const. art. I, § 8, cl. 4.

immigration matters. The Welfare Reform Act instead reflects Congress's desire to reduce federal expenditures on behalf of what this Court itself has acknowledged to be a relatively powerless, discrete and insular minority. Indeed, Congress was not willing even to spend the money to fund deportation proceedings against destitute noncitizens —even though their presence in the country is inconsistent with the policy in the Welfare Reform Act requiring self-sufficiency on the part of immigrants. Congress is accordingly responsible for the continued presence of destitute noncitizens lawfully in this country, yet it will not grant them the protection of the federal social safety net, leaving the social problems that their continued presence creates for state and local governments to address.

All these cost-saving measures may be politically understandable, but as a matter of constitutional law, they reflect the exercise of congressional power over spending, not immigration. A law that simply saves money and affects no one's immigration status cannot be an exercise of the federal immigration power. Such legislation therefore falls within the holding in *Adarand*. The federal government, no less than state and local governments, is forbidden to balance its budget by denying welfare benefits to lawful permanent residents.

2. To reach a contrary conclusion, the court of appeals relied on this Court's decision in *Diaz*, which upheld the disqualification of noncitizens who had not resided in the United States continuously for at least five years from eligibility for insurance under the federal Medicare program. Medicare, however, differs in critical respects from the welfare statutes at issue here. Medicare is available to all eligible persons over age 65, and is financed in equal parts by the federal government and monthly premiums paid by those who choose to enroll. See 426 U.S. at 70

& n.1. And because Medicare is an insurance program dependent on premiums paid by participants, some type of durational residency requirement was required to ensure that mere "transients" who have paid no premiums could not be granted benefits. See *id.* at 82-83. While the Court "assume[d] that the five-year line drawn by Congress is longer than necessary to protect the fiscal integrity of the program," *ibid.*, there was no "principled basis for prescribing a different" duration, and hence the Court refused to "substitute [its] judgment for that of Congress in deciding which aliens shall be eligible to participate in the supplementary insurance program on the same conditions as citizens." *Id.* at 84.

The result in *Diaz* can be readily reconciled with the approach taken in *Graham*—and it need not depend on the distinction repudiated in *Adarand* between federal and state equal protection standards. The holding in *Graham* does not "require every statutory exclusion of aliens to clear the high hurdle of 'strict scrutiny,' because to do so would 'obliterate all distinctions between citizens and aliens, and thus depreciate the historic values of citizenship.'" *Foley*, 435 U.S. at 295 (quoting *Nyquist v. Mauclet*, 432 U.S. 1, 14 (1977) (Burger, C.J., dissenting)). Indeed, in *Graham* itself, the Court acknowledged that it has long been the law that both the federal and state governments can deny certain types of public benefits when there is a "special public interest" supporting such a classification. See 403 U.S. at 372.[9] Indeed it is well settled that noncitizens can be made subject to special regulations or restrictions that appro-

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[9] More recently, the Court has referred to this doctrine as the "political function" or "sovereign function" doctrine. See, *e.g.*, *Bernal v. Fainter*, 467 U.S. 216, 221 (1984); *Ambach v. Norwick*, 441 U.S. 68, 75 (1979).

priately advance legitimate governmental interests even when federal immigration powers are not at stake. *E.g., DeCanas v. Bica*, 424 U.S. at 354-56. Eligibility for insurance benefits fits comfortably within this rule—in all fairness, noncitizens newly arrived in this country should not enjoy the benefits of an insurance pool to which they have not contributed through the payment of premiums. The result in *Diaz*, however, does not support the constitutionality of the provisions of the Welfare Reform Act at issue here. The federal welfare programs at stake here are funded out of current tax revenues, not an insurance fund, and "[a]liens like citizens pay taxes . . . ." *Graham*, 403 U.S. at 376. For that reason, *Graham* concluded that "[t]here can be no 'special public interest' in tax revenues to which aliens have contributed on an equal basis with the residents of the State." *Ibid.*

Moreover, there are at least three other reasons to limit the scope of the holding of *Diaz*. First, to read *Diaz* to sustain any federal legislation that encourages self-sufficiency, deters immigration, conserves tax revenues, or promotes naturalization would create considerable tension between *Diaz* and *Graham*'s holding that Congress's immigration power cannot authorize the States to discriminate against noncitizens when determining eligibility for state-administered but federally funded welfare programs.[10] And in *Diaz* the Court was careful not to disturb the holding in *Graham*. See 426 U.S. at 84-85. Second, in light of *Adarand*, the broadest language in *Diaz* is particularly suspect, since *Diaz* was decided, as we ex-

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[10] Indeed in *DeCanas*, the Court observed that *Graham* implicitly recognized that rules governing the eligibility of noncitizens for welfare do not fall within federal immigration powers; for if they did the state statutes at issue would have been found to have been preempted by the exclusive federal authority over immigration rather than invalidated for other reasons. See 424 U.S. at 355.

plain above, at a time when the Court had not yet settled on the extent to which equal protection principles apply to federal legislation. Indeed, the Court's statements expressing doubt on this point in *Mow Sun Wong* were set forth in an opinion delivered on the same day as *Diaz*, and written by the same Member of the Court. Third, surely the argument for use of a durational residence requirement is no less compelling for a state or local governmental insurance program that for an analogous federal program such as Medicare, yet if *Diaz* were understood to rest solely on federal immigration powers rather than the special public interest doctrine, state and local governments would be forbidden to utilize durational residence requirements for noncitizens even when they administer insurance programs.

Nevertheless, it cannot be doubted that *Diaz* contains quite broad language that appears to condone virtually any type of federal legislation that discriminates against noncitizens in determining eligibility for any type of federally funded benefit or service. See 426 U.S. at 79-87. And given the broad and apparently unqualified language in *Diaz*, it is perhaps unsurprising that the lower courts have uniformly relied on *Diaz* to sustain the Welfare Reform Act. See App., *infra* at 9a-10a; *Rodriguez v. United States*, 169 F.3d 1342, 1350 (11th Cir. 1999); *Kiev v. Glickman*, 991 F. Supp. 1090, 1095-97 (D. Minn. 1998); *Abreu v. Callahan*, 71 F. Supp. 799, 807-11 (S.D.N.Y. 1997); *Alvarino v. Wing*, 690 N.Y.S.2d 262 (N.Y. App. Div. 1999); *Cid v. South Dakota Department of Social Services*, 598 N.W.2d 887, 891-93 (S.D. 1999).

These decisions are but the latest chapter in an unbroken chain of decisions, in the more than two decades since *Diaz* was decided, that have consistently afforded to

the federal government authority to deny noncitizens virtually any type of benefit. See, *e.g., Moving Phones Partnership v. FCC*, 998 F.2d 1051, 1056 (D.C. Cir. 1993), cert. denied, 511 U.S. 1004 (1994); *Sudomir v. McMahon,,* 767 F.2d 1456, 1464-67 (9th Cir. 1985); *Campos v. FCC*, 650 F.2d 890, 893-94 (7th Cir. 1981); *Mow Sun Wong v. Campbell*, 626 F.2d 739, 744-45 (9th Cir. 1980), cert. denied, 450 U.S. 959 (1981); *Vergara v. Hampton*, 581 F.2d 1281, 1286-87 (7th Cir. 1978), cert. denied, 441 U.S. 905 (1979).[11]

It is understandable that the lower courts feel constrained by the broad language in *Diaz*, regardless of the tension that exists between it and the holdings in both *Adarand* and *Graham*. After all, this Court has been unequivocal in instructing the lower courts that when "a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (quoting *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989)). Here, of course, we seek no repudiation of *Diaz*, but only a qualification of its holding. Nevertheless, it seems clear in this context that only this Court can limit its prior holding. And absent limitation of *Diaz*, it seems plain that the lower courts will feel bound to conclude that Congress has received this Court's blessing to enact virtually any type of legislation that enables it to balance the federal budget on the backs of noncitizens.

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[11] We do not submit that all of the cases in this line were incorrectly decided; some of these cases involve benefits that may well fall under the same rule that we believe supports the outcome in *Dias*.

3. The Welfare Reform Act is precisely the type of legislation that one would expect a legislature to produce when it seeks to balance its budget at the expense of a discrete and insular minority. There can be no doubt that the provisions of the Welfare Reform Act at issue here save the federal government an enormous amount of money. For example, the House Report states that the Act was intended to reduce "[f]ederal spending by billions of dollars by withholding welfare payments to aliens." H.R. Rep. No. 104-651 at 1443 (1996), reprinted in 1996 U.S.C.C.A.N. 2502. The Congressional Budget Office estimated that as a result of the Welfare Reform Act's new restrictions on the eligibility of noncitizens for welfare, the federal government would save $2.9 billion in fiscal year 1997 and $54.2 billion by 2002. See Symposium, *Closing the Door on the Immigrant Poor*, 9 Stan. L. & Pol'y Rev. 141, 142 (1998). See also Stacy Sulman Kahana, *Crossing the Border of Plenary Power: The Viability of an Equal Protection Challenge to Title IV of the Welfare Reform Act*, 39 Ariz. L. Rev. 1421, 1439 (1997). Fully 44% of the savings projected from the Welfare Reform Act were attributable to its restrictions on the eligibilty of noncitizens for welfare benefits. See 142 Cong. Rec. S9406, S9410 (daily ed. Aug. 1, 1996). And the Act's legislative history is littered with congressional complaints about the amount of the cost of providing welfare benefits for noncitizens. See, *e.g.*, 142 Cong. Rec. S9390 (daily ed. Aug. 1, 1996) (remarks of Sen Helms); 142 Cong. Rec. S9352, S9357 (daily ed. Aug. 1, 1996) (remarks of Sen. Nickles); 142 Cong. Rec. H9401 (daily ed. July 31, 1996) (remarks of Rep. Smith of Texas); *Immigration and Public Welfare Benefits 1196: Hearings Before the Senate Comm. on the Budget*, 104th Cong., 2d Sess. 72 (March 12, 1996) (remarks of Sen. Dominici) [hereinafter cited as "*Budget Hearings*"]; *Use of*

Supplemental Security Income and Other Welfare Programs by Immigrants, 1996: Hearings Before the Subcomm. on Immigration of the Senate Judiciary Comm., 104th Cong., 2d Sess. 2-3 (Feb. 6, 1996) (remarks of Sen. Simpson) [hereinafter cited as "*Immigration Hearings*"].

Congress's stated rationale for reaping these savings at the expense of one discrete class of welfare recipients was its desire to encourage self-sufficiency among noncitizens. See 8 U.S.C. § 1601 (Supp. II 1996). Yet in the same legislation, Congress also announced its intention to encourage self-sufficiency among citizens as well. See 42 U.S.C. § 601 (Supp. II 1996). To that end, it placed a variety of additional limitations on the eligibility of citizens and noncitizens alike for federally funded welfare benefits. See, *e.g.*, *id.* § 608(a). To support additional restrictions on the eligibility of noncitizens, then, surely Congress should have identified some special reason to believe that welfare undermines the self-sufficiency of noncitizens in particular. In fact, however, Congress made no such finding.

Nor was there evidence before Congress indicating that noncitizens utilize federally funded welfare benefits more frequently than citizens. In truth, the great majority of immigrants in this Nation do not receive welfare. See, *e.g.*, *Immigration Hearings* at 70-79 (statement of Michael Fix); *id.* at 35 (statement of Susan Martin); Michael Fix, Jeffrey S. Passel, and Wendy Zimmerman, *Facts About Immigrants' Use of Welfare* (Urb. Inst., April 1, 1996). For example, in 1993, 94% of immigrants received no welfare benefits at all. *Id.* at 1. Only in the SSI program do noncitizens receive benefits at a greater rate than citizens. See Michael Fix & Jeffrey S. Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits* (Urb. Inst. March 1999); Susan Lewonski,

Elderly Legal Immigrants and Welfare Reform: An Analysis of the Effects of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 7 Kan. J.L. & Pub. Pol'y 53, 55 (1998).[12] Yet Congress did not limit the special disabilities that it imposed on noncitizens to the SSI program. Instead, it radically restricted their eligibility for all federal means-tested benefits—presumably because it was interested in saving money at the expense of a relatively powerless minority regardless of whether there was evidence that noncitizens were utilizing welfare programs more frequently than citizens.[13] This kind of legislation—evincing at best a serious overreaction to a limited problem—is typical of the type of legislative overreaching that is all too likely to occur when only the interests of a discrete and relatively powerless minority are at stake. What is more, it is especially difficult to characterize noncitizens' receipt of SSI benefits as abusive or inappropriate; an applicant can receive SSI benefits only if the Secretary of Health and Human Services finds that an applicant is aged, blind, or disabled and

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[12] Even the supporters of the Welfare Reform Act did not claim that noncitizens use any federally funded welfare program disproportionately other than SSI. See, *e.g.*, 142 Cong. Rec. H77803 (July 18, 1996) (remarks of Rep. Shaw).

[13] Moreover, even given the rate at which noncitizens utilize SSI, there is no evidence that noncitizens impose any greater financial burden on federal resources than citizens. In fact, lawfully admitted immigrants generate significantly more in taxes than they cost in services they receive. See *Immigration Hearings* at 57 (statement of Senator Kennedy disclosing that "on average, legal immigrants pay $2,500 more in taxes each year than it costs the government to educate their children or provide other services."); *Budget Hearings* at 147 (statement of Rep. Xavier Becerra that, in addition to contributing to the tax base, immigrants "create more jobs than they themselves fill," and that "[i]n aggregate, immigrants pay $25 billion more annually than they receive in benefits . . . .").

satisfies statutory criteria governing income and assets. See 42 U.S.C. §§ 1382, 1383(c).[14]

The human cost of this legislative overreaction will be catastrophic. For example, legal permanent residents arriving in the United States after August 22, 1996, are forever barred from receiving SSI benefits or Food Stamps until they are naturalized, and are barred from TANF and Medicaid for at least five years.[15] Persons who become blind or disabled, single parents working at low-wage jobs, and even intact working families who cannot afford medical insurance, will be deprived of critical governmental assistance.

Congress's authority to control the borders grants it ample power to ensure that the availability of welfare benefits does not create an improper incentive for immigration, and to address abuses by persons already admitted to lawful residence in the United States. Congress may, of course, condition entry into the country upon a showing that an immigrant can support himself and authorize deportation of those who fail to do so; indeed it has already done just that to a considerable extent. For instance, an immigrant may not enter the country if a consular official or the Attorney General determines that he or she is likely to become a public charge. See 8 U.S.C. § 1182(a)(4) (1994). Similarly, mandatory affidavits of support are required for nearly all family-based

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[14] Despite the absence of any support in the legislative history or congressional findings accompanying the Welfare Reform Act, the court of appeals believed that the provisions of the Act at issue here were also intended to promote naturalization. See App., *infra* at 17a. Even if this were true, it is again at best a gross overreaction, since Congress restricted welfare eligibility even for persons not legally eligible to naturalize, such as persons who have not resided in this country for at least five years. See 8 U.S.C. § 1427(a).

[15] Relief is available only for individuals with at least 40 quarters of covered employment. See n.1. *supra*.

immigrants and some employment-based immigrants. See *id.* § 1182(a)(4)(C), (D). Moreover, legal immigrants who become public charges within five years of the date of admission from causes not affirmatively shown to have arisen since their admission are subject to deportation. See *id.* at § 1227(a)(5). And we do not doubt that Congress could go further and authorize the deportation of anyone who becomes a public charge. But in the Welfare Reform Act Congress did not authorize anyone's deportation nor impose new conditions upon entry into the United States. Far from exercising its broad powers over immigration, Congress refused to do so; it was content to permit destitute noncitizens to remain in the country as long as the financial and social burdens they impose fall on state and local governments and private charities. And when Congress attempts to save money at the expense of a powerless minority, there is no more reason to exempt it from equal protection principles than when the same savings are sought by state and local governments.

Of course, poor and disabled immigrants will not simply disappear because they are denied federal welfare benefits. The social and budgetary pressures that they create will still be felt by state and local governments, and those governments will be forced to shoulder the costs associated with providing essential services for these immigrants, whose presence in this country is a result of policies and decisions made by the federal government. Indeed, members of Congress were well aware that this burden would be shifted to state and local governments. As Senator Arlen Specter surmised: "a good bit of [the cost] will be picked up by the states . . . [a]nd I think some will be picked up by the cities." See Equal Time: Interview with Senator Arlen Specter about the impact of the legislation on legal immigrants (CNBC television broadcast, Aug. 1, 1996). By shifting the cost of caring for needy immigrants in

this manner Congress imposed what is essentially an unfunded mandate upon state and local governments. See *Budget Hearings* at 128-37 (statement of Karen Darner on behalf of National Conference of State Legislatures). This shift is particularly unfair and burdensome because "most of the taxes paid by immigrants flow to the U.S. Treasury (e.g., FICA), while many of the services used by immigrants (e.g., education) are paid for by local governments." Michael E. Fix and Karen Tumlin, *Welfare Reform and the Devolution of Immigration Policy* at 5 (Urb. Inst. 1999).

We do not take issue with the federal government's broad prerogatives over policies and laws related to immigration. Rather, our submission is that given those prerogatives, the federal government should not be permitted to escape its fair share of the economic burdens that result when it admits individuals to lawful permanent residence in this country. By withdrawing welfare benefits from noncitizens solely on the basis of their status, the federal government has done precisely what state and local governments were forbidden to do in *Graham v. Richardson*. That decision rests on the principle that state and local governments may not assume that noncitizens are any more likely to have their incentive to support themselves undermined by the availability of welfare benefits than anyone else—such an assumption amounts to discrimination in the purest sense of the word. There is no more reason to tolerate such discrimination when it appears in the form of federal legislation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 98-2382, 98-2479

CITY OF CHICAGO, RICHARD M. DALEY, DANIEL ALVAREZ, SR., Commissioner of Human Services, *et al.*,
Plaintiffs-Appellants,

and

MORRIS I. SINELNIKOV, MAXIMINIA CARMONA, IGNACIA OROZCO, *et al.*,
Intervenor-Plaintiffs-Appellants,

v.

DONNA E. SHALALA, Secretary of Health and Human Services, JOHN J. CALLAHAN, Acting Commissioner of Social Security, DANIEL R. GLICKMAN, Secretary of Agriculture, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 97 C 4884—Blanche M. Manning, *Judge*.

ARGUED APRIL 1, 1999—DECIDED AUGUST 31, 1999

Before HARLINGTON WOOD, JR., RIPPLE and KANNE, *Circuit Judges.*

RIPPLE, *Circuit Judge.* The City of Chicago, along with several city officials and an intervenor class of legal permanent residents, brought suit against the Secretary of Health and Human Services and other federal officers to challenge certain provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) ("the Welfare Reform Act" or "the Act"), that restrict certain noncitizens' eligibility for welfare benefits. The plaintiffs alleged that the provisions of the Act that disqualify most legal aliens from receiving Food Stamps, Supplemental Security Income ("SSI"), and other welfare benefits violate the Fifth Amendment's Due Process Clause. The district court granted the defendants' motion to dismiss, and the plaintiffs appeal. For the reasons set forth in the following opinion, we affirm the judgment of the district court.

I

BACKGROUND

A. The Welfare Reform Act

The Welfare Reform Act significantly restricted the eligibility of noncitizens lawfully in the United States to receive welfare benefits. *See* Pub. L. No. 104-193, 110 Stat. 2105, 2262-64 (1996).[1] Section 402(a) of the Act

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[1] Congress has amended the Act twice since its original enactment in 1996. *See* Balanced Budget Act of 1997, Pub. L. No. 105-33, §§ 5301-5304, 5306, 5562-5563, 111 Stat. 251 (1997); Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. No. 105-185, §§ 503-508, 112 Stat. 523 (1998). The amendments restored eligibility for welfare benefits to some noncitizens by expanding the exceptions to the provisions excluding aliens from eligibility. This opinion will refer to the provisions of the

provides that, subject to certain exceptions, "qualified alien[s]" are not eligible to receive SSI or Food Stamp benefits. 8 U.S.C. § 1612(a) (1998).[2] As defined in § 431 of the Act, qualified aliens include permanent resident aliens, asylees, refugees, aliens who are paroled into the United States, aliens whose deportation is being withheld, aliens who have been granted conditional entry, certain Cuban and Haitian entrants, and certain "battered" aliens. *See id.* § 1641.[3]

Section 402(a)(2) enumerates several exceptions that allow various sub-groups within the qualified alien population to remain eligible for SSI, Food Stamps, or both. Refugees, asylees, aliens whose deportation is being withheld, certain Cuban and Haitian entrants, and certain Amerasian immigrants remain eligible for 7 years after the date they are admitted to the United States or are granted the relevant status. *See id.* § 1612(a)(2)(A). Permanent resident aliens who have worked for 40 qualifying quarters, as well as aliens who are veterans or on active duty (and their spouses and dependent children), retain their eligibility for the benefits. *See id.* § 1612 (a)(2)(B), (C). Aliens lawfully residing in the United States who were receiving SSI benefits as of the date of

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Welfare Reform Act that are currently codified, as amended, in Title 8 of the United States Code.

[2] The SSI program provides supplemental security income to low-income individuals who are blind, disabled, or 65 or older. *See* 42 U.S.C. § 1381 et seq. The Food Stamp program provides food purchasing assistance to households with low income and few resources. *See* 7 U.S.C. § 2011 et seq.

[3] The Act also provides that, subject to certain exceptions, "illegal" or "undocumented" aliens—aliens who do not meet the definition of "qualified alien"—are ineligible for any federal public benefit, including SSI and Food Stamps. *See* 8 U.S.C. § 1611. However, the provisions governing illegal aliens are not at issue in this lawsuit.

enactment (August 22, 1996) retain their eligibility for SSI. *See id.* § 1612(a)(2)(E).[4] Aliens who were receiving Food Stamps on the date of enactment remained eligible thereafter for a limited grace period, which is now over. *See id.* § 1612(a)(2)(D)(ii). Aliens who were lawfully residing in the United States on the date of enactment retain eligibility for SSI if they are blind or disabled and for Food Stamps if they are "receiving benefits or assistance for blindness or disability" within the meaning of the Food Stamp Act of 1977. *Id.* § 1612(a)(2)(F). Members of Indian tribes, as defined in 25 U.S.C. § 450b(e), and certain American Indians born in Canada remain eligible for the benefits. *See* 8 U.S.C. § 1612(a)(2)(G). Aliens who received SSI benefits after July 1996 on the basis of an application filed before January 1, 1979, also retain eligibility for SSI. *See id.* § 1612(a)(2)(H). Aliens who were either 65 or older or under 18, and were lawfully residing in the United States on the date of enactment, remain eligible for Food Stamps. *See id.* § 1612(a)(2)(I), (J). Finally, certain Hmong and Highland Laotians who are lawfully residing in the United States, and their spouses and dependent children, remain eligible for Food Stamps. *See id.* § 1612(a)(2)(K).

In § 402(b) of the Act Congress authorized the states subject to certain exceptions, to determine the eligibility of qualified aliens for three other federal benefit programs: Temporary Assistance for Needy Families ("TANF"), Social Services Block Grants ("SSBG"), and Medicaid. *See id.* § 1612(b). The exceptions to this provision, enumerated in § 402(b)(2), are similar to the exceptions in § 402(a)(2) and provide that certain subgroups are eligible for the designated federal programs.

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[4] *See also* 8 U.S.C. § 1612(a)(2)(D)(i) (providing a grace period and reassessment for aliens who were receiving SSI on the date of enactment).

B. Proceedings in the District Court

The City of Chicago and several city officials (collectively, "the City") brought suit seeking declaratory and injunctive relief against five federal officers ("the defendants"). The City alleged that the provisions of the Welfare Reform Act that disqualify noncitizens lawfully in the United States from the various federally funded welfare programs violate the equal protection component of the Fifth Amendment's Due Process Clause and the Older Americans Act.[5] Subsequently, a number of legal permanent residents of the United States and an organization of ethnic associations with members who are legal permanent residents (collectively, "the intervenors") filed a motion to intervene, a motion for class certification, a class action complaint,[6] and a motion for preliminary injunction. The district court granted the intervenors' requests for class certification and for intervention.[7] The defendants filed separate motions to dismiss the City's and the intervenors' complaints. The district court granted the motions to dismiss. The City and the intervenors appeal.

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[5] 42 U.S.C. §§ 3001, et seq.

[6] The intervenors' complaint brought a claim for violation of the equal protection component of the Fifth Amendment's Due Process Clause.

[7] The court certified two classes. The "SSI class" includes Illinois residents who are lawful permanent residents of the United States and who had their SSI benefits terminated, or had a claim for SSI benefits denied, after August 22, 1996, pursuant to the provisions of the Welfare Reform Act (8 U.S.C. § 1612). The "non-SSI class" consists of Illinois residents who are lawful permanent residents of the United States and who, after August 22, 1996, received, applied for, or will apply for Food Stamps, TANF, Medicaid, or SSBG, and who have had or will have their benefits terminated or their applications denied pursuant to the provisions of the Welfare Reform Act.

C. Holding of the District Court

The district court granted the defendants' Rule 12(b)(6) motions to dismiss the City's and the intervenors' complaints and denied as moot the plaintiffs' motions for preliminary injunction. The court first held that the City lacked standing to bring a claim under the Older Americans Act and therefore dismissed that claim.[8] The court did not address the City's standing to bring a constitutional challenge to the Welfare Reform Act because it found that it had jurisdiction to reach the merits of the same claim by the intervenors.

Turning to the intervenors' claims, the court held that the claims of the SSI class and the Food Stamp claims of the non-SSI class were barred by res judicata.[9] The court then addressed the merits of the remaining claim—a con-

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[8] The City does not appeal the district court's ruling on the Older Americans Act claim.

[9] The court concluded that two previous lawsuits, *Shvartsman v. Callahan*, No. 97 C 5229, 1997 WL 573404 (N.D. Ill. Sept. 11, 1997), *aff'd*, *Shvartsman v. Apfel*, 138 F.3d 1196 (7th Cir. 1998), and *Zizumbo v. Callahan*, No. 97 C 4971 (N.D. Ill. Mar. 18, 1998), warranted the application of res judicata to bar the claims of the SSI class and the Food Stamp claims of the non-SSI class. In *Shvartsman*, a class of legal permanent resident aliens who were receiving Food Stamps and who sought citizenship before their eligibility terminated under the Welfare Reform Act challenged the implementation of the Act's citizenship requirement. They claimed that the transition procedures prescribed by the Act, coupled with the INS's delay in processing their citizenship applications, violated due process. *See Shvartsman*, 138 F.3d at 1197.

In *Zizumbo*, two permanent resident aliens whose applications for SSI benefits were filed prior to, but adjudicated after, the effective date of the Welfare Reform Act brought a class action suit challenging the application of the citizenship requirement to their SSI claims for the period before the date of enactment. The plaintiffs in *Zizumbo* did not challenge the application of the citizenship requirement to claims for benefits for the time period after the date of enactment. *See* Complaint, App. at 18B-19B.

stitutional challenge to the Welfare Reform Act brought by those non-SSI class members asserting TANF, SSBG, and Medicaid claims. Applying rational basis scrutiny, the court concluded that the Welfare Reform Act bears a rational relationship to several of Congress' stated goals, including encouraging self-sufficiency among immigrants, preventing public benefits from serving as an incentive to immigrate, and easing the burden on the public welfare system. The court therefore granted the defendants' motions to dismiss and denied as moot the plaintiffs' motions for preliminary injunction.

II

DISCUSSION

The plaintiffs appeal three issues: whether the City has standing to challenge the constitutionality of the Welfare Reform Act, whether the district court erred in ruling that certain plaintiffs' claims are barred by res judicata, and whether the Welfare Reform Act is unconstitutional. As an initial matter, we note that we have jurisdiction to review the merits of the constitutional challenge without reaching the issues of the City's standing or res judicata. There is no dispute that the intervenors who have been rendered ineligible for benefits have standing to challenge the constitutionality of the Act. Thus, the district court had jurisdiction to adjudicate the merits of the constitutional claim, *see Bowsher v. Synar*, 478 U.S. 714, 721 (1986), and indeed did so. We therefore have jurisdiction to review the district court's final judgment. We note further that the district court's decision to rely on res judicata as to some of the plaintiffs does not affect our ability to review the merits of the constitutional challenge. *See Maguire v. Thompson*, 957 F.2d 374, 376, 379 (7h Cir.), *cert. denied*, 506 U.S. 822 (1992) (affirming, on the

merits, the district court's dismissal of a claim challenging the constitutionality of a statute, without reviewing the district court's alternative holding that res judicata barred the plaintiffs' claim). Because we resolve the merits of the constitutional challenge in favor of the defendants, we need not reach the issues of res judicata or the City's standing.

We turn now to the merits of the constitutional challenge to the Welfare Reform Act's citizenship requirement.

A. Standard of Review

In order to assess the constitutionality of § 402 of the Welfare Reform Act, we must first determine the appropriate level of scrutiny for judicial review of the legislative enactment at issue. In *Graham v. Richardson*, 403 U.S. 365 (1971), the Supreme Court held that a state statute that denies welfare benefits to resident aliens (or denies benefits to resident aliens who have not resided in the United States for a specified number of years) violates equal protection. *See id.* at 376. Noting that aliens are a "'discrete and insular' minority," *id.* at 372 (quoting *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152-53 n.4 (1938)), the Court applied "heightened" or "close judicial scrutiny" to the statutes at issue. *Id.* The Court, however, limited its holding to state legislation. Indeed, the Court devoted several paragraphs of its opinion to distinguishing between state authority to make alienage-based classifications and federal authority to do so. *See id.* at 376-78. The Court acknowledged that the federal government's plenary authority over issues of immigration and naturalization provided an additional justification to invalidate state statutes that conflicted with overriding national policies in this area. *See id.*

Indeed, in *Mathews v. Diaz*, 426 U.S. 67 (1976), the Court made clear that the standard of scrutiny applied to state legislation in *Richardson* does not govern judicial review of federal legislation involving alienage. In *Diaz*, the Supreme Court upheld federal legislation that restricted certain aliens' eligibility for a medical insurance program based on the duration of their residence in the United States and on their admission for permanent residence.[10] The Court emphasized that "responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government," and therefore judicial review of decisions made by Congress or the President in the area of immigration and naturalization must be narrow. *Id.* at 81-82. Although the Court did not adopt explicitly the "rational basis" standard of scrutiny, it in effect applied rational basis review, upholding the legislation because it was not "wholly irrational." *Id.* at 83. The Court explicitly distinguished the *Richardson* case and explained that state and federal alienage classifications must be treated differently because of Congress' plenary authority to regulate the conditions of entry and residence of aliens. *See id.* at 84-85. In short, we believe that the *Diaz* case is directly on point on the issue of what level of scrutiny should be applied to Congressional

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[10] Notably, the Court characterized the issue in *Diaz* as not whether discrimination between citizens and aliens is permissible but whether discrimination within the class of aliens is permissible, because the statute excluded only those aliens who had not been in the United States for a minimum of 5 years and those who had not received permanent residence. *See Diaz*, 426 U.S. at 80. Similarly in this case, the classifications at issue can be characterized as discrimination *among* aliens, as Congress has excluded some but not all aliens from eligibility for certain welfare benefits. As discussed above, Congress carved out numerous categories of aliens who remain eligible for such benefits. *See* 8 U.S.C. §§ 1612(a)(2), 1613(b).

regulation of aliens' welfare benefits. *See Rodriguez v. United States*, 169 F.3d 1342, 1350 (11th Cir. 1999).[11]

The plaintiffs submit that *Diaz* is not the controlling authority in this case. We shall set forth briefly why we cannot accept this argument. First, the plaintiffs submit that the Court's more recent holding in *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995), makes clear that the strict scrutiny applied in *Richardson* should apply to federal alienage classifications as well. In *Adarand*, the Supreme Court articulated a general rule that equal protection analysis under the Fifth Amendment is the same as it is under the Fourteenth Amendment. *See id.* at 217. However, *Adarand* itself acknowledged an exception to this general rule for cases in which special deference to the political branches of the federal government is appropriate. *See id.* at 217-18 (citing *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976), a case involving federal exercise of the immigration power).

The plaintiffs also submit that the holding of *Diaz* should be limited to cases in which a durational residency requirement is necessary to maintain the fiscal integrity of an insurance program. We cannot read any such limitation into the Court's holding in *Diaz*. The Court relied on the rational link between duration of residency and the fiscal soundness of an insurance program only when evaluating whether the statute at issue satisfied the rational basis test, not when determining what level of scrutiny should apply. We therefore see no reason to limit the Court's articulation of the rational basis standard to the particular factual situation of that case.

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[11] *See also Kiev v. Glickman*, 991 F. Supp. 1090, 1095-97 (D. Minn. 1998); *Abreu v. Callahan*, 971 F. Supp. 799, 807-11 (S.D.N.Y. 1997); *cf. Campos v. FCC*, 650 F.2d 890, 894 (7th Cir. 1981) (holding broadly that federal alienage-based classifications are subject only to narrow judicial review, and sustaining legislation conditioning the grant of commercial radio operator licenses on citizenship).

The plaintiffs further argue that, even if federal laws enacted under Congress' plenary immigration power are subject to rational basis review, the Welfare Reform Act is not such a law because it does not regulate the terms or conditions of immigration or naturalization. A statute that makes indigent aliens deportable, they submit, would constitute an exercise of the immigration power, but the Welfare Reform Act's withdrawal of welfare benefits from resident aliens, by contrast, is not within the scope of the immigration power. We cannot accept this argument. We believe that the Court's analysis in *Diaz* makes clear that, for purposes of equal protection analysis, Congress' interest in regulating the relationship between our alien visitors and the national government ought not to be defined in such narrow terms as to preclude application of the rational basis test in a case such as the present one involving eligibility for government benefits. *See Diaz*, 426 U.S. at 81-83 (characterizing Congress' decision to restrict certain aliens' eligibility for welfare benefits as a decision "in the area of immigration and naturalization" and noting that "the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government"); *see also Rodriguez*, 169 F.3d at 1349.[12] In sum, we conclude that, under the holding in *Diaz*, the provisions of the Welfare Reform Act at issue in this case must be reviewed under rational basis scrutiny.

The intervenors additionally submit that, even if strict scrutiny does not apply, at least some intermediate level

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[12] The amicus suggests that deferential review is warranted only when federal legislation actually regulates "core immigration functions," not whenever the legislation merely affects immigrants. In support of this contention, the amicus cites cases that invalidated statutes that "affected" noncitizens. However, none of the cited cases addresses this issue as directly as does the *Diaz* case.

of scrutiny should be employed. Relying on *Plyler v. Doe*, 457 U.S. 202 (1982), they argue that, because the Act imposes a severe and permanent deprivation upon a discrete and disadvantaged class, the alienage-based classification must be subjected to intermediate scrutiny. In *Plyler*, the Supreme Court applied intermediate scrutiny to a state law excluding illegal immigrant children from public education. *See id.* at 223-24. As the Eleventh Circuit pointed out in *Rodriguez*, however, the *Plyler* case involved a state law, and nothing in the Court's opinion suggests that *Diaz* would not apply (or that heightened scrutiny would apply) if the law were federal. *See Rodriguez*, 169 F.3d at 1349-50. In fact, *Plyler* cited *Diaz* to point out that the deference owed to Congress in matters of aliens' status within our borders does not apply to state classifications of aliens. *See Plyler*, 457 U.S. at 225. The Court stated:

> The States enjoy no power with respect to the classification of aliens. *See Hines v. Davidowitz*, 312 U.S. 52 (1941). This power is "committed to the political branches of the Federal Government." [*Mathews v. Diaz*, 426 U.S. at 81]. Although it is "a routine and normally legitimate part" of the business of the Federal Government to classify on the basis of alien status, *id.* at 85, and to "take into account the character of the relationship between the alien and this country," *id.* at 80, only rarely are such matters relevant to legislation by a State.

Id. (parallel citations omitted). Because the law at issue in the case before us is a federal enactment, *Plyler* does not alter our reliance on *Diaz* for the application of rational basis review to the provisions of the Welfare Reform Act.

B. Application of the Rational Basis Test

We turn now to the application of the rational basis test. The Supreme Court has admonished that "rational-basis review in equal protection analysis 'is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.'" *Heller v. Doe*, 509 U.S. 312, 319 (1993) (quoting *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993)). Rather, a statute survives rational basis scrutiny "if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Id.* at 320. Moreover, under rational basis review, Congress need not actually articulate the legitimate issue. Instead, a statute "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Id.* (quoting *Beach Communications*, 508 U.S. at 313) (internal quotation marks omitted). We are required, under the rational basis standard, "to accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational-basis review because it "is not made with mathematical nicety or because in practice it results in some inequality." *Id.* at 321 (quoting *Dandridge v. Williams*, 397 U.S. 471, 485 (1970) (quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911))) (internal quotation marks omitted).

The policy objectives that Congress hoped to achieve through the enactment of the Welfare Reform Act are set forth in 8 U.S.C. § 1601.[13] First, Congress stated that the

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[13] 8 U.S.C. § 1601, titled "Statements of national policy concerning welfare and immigration," provides:

> The Congress makes the following statements concerning national policy with respect to welfare and immigration:

Act's provisions are intended to foster the legitimate governmental purpose of encouraging aliens' self-sufficiency. It is Congress' stated policy that "aliens within the Nation's borders not depend on public resources to meet their

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(1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

(2) It continues to be the immigration policy of the United States that—

(A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and

(B) the availability of public benefits not constitute an incentive for immigration to the United States.

(3) Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.

(4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.

(5) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.

(6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.

(7) With respect to the State authority to make determinations concerning the eligibility of qualified aliens for public benefits in this chapter, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.

8 U.S.C. § 1601 (Supp. 1999).

needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations." 8 U.S.C. § 1601(2)(A). The plaintiffs submit that, because federal immigration policy already prohibits the immigration of those who are likely to become public charges, the benefits at issue in this case serve only as a safety net. Therefore, they contend, it is irrational to remove this safety net in an effort to encourage aliens to be more reliant on their families, sponsors, and private organizations because it is precisely those aliens who are unable to rely on such alternate sources of support who need the benefits in the first place. Moreover, they argue, removing welfare benefits from aliens who are elderly, disabled, or children will not help them become self-reliant because they are simply unable to work.

Whatever the merits of this criticism of the Welfare Reform Act, as a matter of public policy, we cannot say *some* aliens who are unable to work will not be induced to provide for themselves. In Congress' view, such aliens ought to rely on their families, sponsors, or private organizations for support, rather than on the public welfare rolls. The statute is reasonably related to that goal. Indeed, even if some aliens have no access to support from these alternate sources, the citizenship requirement is still rationally related to the goal of encouraging aliens to rely on private, not public, resources to meet their needs. *See Heller*, 509 U.S. at 321 (noting that rational basis review requires courts to "accept a legislature's generalizations even when there is an imperfect fit between means and ends"); *Zehner v. Trigg*, 133 F.3d 459, 463 (7th Cir. 1997) ("[T]he classification need not be the most norrowly tailored means available to achieve the desired end."); *see also Kiev*, 991 F. Supp. at 1099-1100; *Abreu v. Callahan*, 971 F. Supp. 799, 818 (S.D.N.Y. 1997).

Congress has stated its policy that "the availability of public benefits not constitute an incentive for immigration to the United States." 8 U.S.C. § 1601(2)(B). Although reasonable individuals certainly can disagree on the wisdom of controlling immigration through such a policy, we must conclude that the provisions of the Welfare Reform Act are rationally related to the legitimate governmental goal of discouraging immigration that is motivated by the availability of welfare benefits. In reference to state welfare benefits, the Supreme Court has acknowledged that "[a]lien residency requirements for welfare benefits necessarily operate . . . to discourage entry into or continued residency in the State." *Richardson*, 403 U.S. at 379. We cannot say, therefore, that it was irrational for Congress to conclude that removal of federal welfare benefits would have a similar deterrent effect on immigration into the United States. The plaintiffs submit that there is no rational connection between withdrawing benefits from legal resident aliens who were already in the United States when the Act was enacted and the goal of deterring future immigrants from coming here to reap welfare benefits. Although the Act may be overinclusive in this respect, again, rational basis scrutiny does not require a perfect fit. We therefore are constrained to hold that there is a rational relationship between the Welfare Reform Act's restriction of aliens' eligibility for welfare benefits and the legitimate governmental goal of determining immigration that is motivated by the availability of those benefits.

Section 1602 also declares that Congress wanted to preserve the public fisc by reducing the rising costs of operating federal benefits programs. The plaintiffs suggest, however, that the distinction between citizens and noncitizens is no more rationally related to the general goal of saving money than would be a distinction between brown-eyed people and all other people; disqualifying any subset of eligible people will save money. But again, we

cannot say that it was irrational for Congress to decide to achieve its budget objectives by eliminating aliens from these programs.[14] In effectuating the governmental goal of cost savings, Congress had to start somewhere and "must be allowed leeway to approach a perceived problem incrementally." *Beach Communications*, 508 U.S. at 316. Moreover, Congress was entitled to conclude that achieving savings by eliminating these benefits to aliens was sufficiently compatible with the other policy objectives that it sought to foster through this legislation.

The executive Branch, defending the constitutionality of the statute before this court, offers a further justification not found in Congress' statement of policy. It submits that the Act's provisions are rationally related to the legitimate governmental purpose of encouraging naturalization. The Act gives resident aliens in need of welfare benefits a strong economic incentive to became naturalized citizens. The plaintiffs again argue overinclusiveness, con-

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[14] Congress had before it evidence that aliens were receiving welfare benefits in increasing numbers. *See, e.g., Supplemental Security Income: Problem Areas and Possible Reforms, Hearing on Supplemental Security Income Before the Senate Comm. on Finance*, 1995 WL 128208 (F.D.C.H. Mar. 27, 1995) ("Another factor underlying the growth of SSI . . . is the rapid growth of aliens on the rolls. According to the General Accounting Office, in 1993 the number of aliens on SSI was 683,000, or about 12% of the SSI caseload, up from 3% in 1982, at an annual cost of $3.3 billion. . . . The rising share of alien recipients is not unique to SSI; it has been observed in each of the major federal public assistance programs—Medicaid, SSI, AFDC, and Food Stamps . . . ." (footnote omitted)); *Proposals to Reduce Illegal Immigration, Hearing Before the Senate Comm. on the Judiciary*, 1995 WL 110439 (F.D.C.H. Mar. 14, 1995) ("The number of SSI recipients who are aliens has been increasing steadily. In December 1994, there were a little more than 738,000 aliens receiving SSI benefits. This is double the number of aliens receiving benefits 5 years ago. Alien recipients now constitute nearly 12 percent of the total number of SSI recipients.").

tending that the statute removes from eligibility certain aliens who cannot seek naturalization, such as elderly or disabled aliens who cannot demonstrate language proficiency or an understanding of United States history and government. The plaintiffs further submit that it is irrational to use the threat of starvation and homelessness to goad people into naturalization. Again, whatever the merits of these arguments in the public policy arena, we cannot accept them as a basis for rendering the statute unconstitutional. This court and other courts of appeals have recognized the legitimacy of this governmental interest in encouraging naturalization. *See, e.g., Campos v. FCC*, 650 F.2d 890, 894 (7th Cir. 1981); *Mow Sun Wong v. Campbell*, 626 F.2d 739, 745 (9th Cir. 1980), *cert. denied*, 450 U.S. 959 (1981). The Supreme Court assumed in *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976), that the "national interest in providing an incentive for aliens to become naturalized" would justify a citizenship requirement for federal civil service employment. *Id.* at 105. We cannot say, therefore, that it would be irrational for Congress to conclude that restricting the availability of welfare benefits to aliens would provide incentive for aliens to seek naturalization. *See Kiev*, 991 F. Supp. at 1100; *Abreu*, 971 F. Supp. at 817-18. As we have already mentioned, rational basis scrutiny does not require a perfect fit between this legitimate governmental purpose and the means chosen to achieve it.

The plaintiffs submit finally that the Act fails rational basis review because it was motivated by impermissible animus toward noncitizens. We disagree. As the Supreme Court made clear in *Diaz*, "it is obvious that Congress has no constitutional duty to provide all aliens with the welfare benefits provided to citizens." *Diaz*, 426 U.S. at 82. "In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would

be unacceptable if applied to citizens. . . . The fact that an Act of Congress treats aliens differently from citizens does not in itself imply that such disparate treatment is 'invidious.'" *Id.* at 79-80. In light of the various rationales discussed above, we cannot say that the Welfare Reform Act is "inexplicable by anything but animus toward the class that it affects." *Romer v. Evans*, 517 U.S. 620, 632 (1996).

Finally, we note that the Welfare Reform Act also contains a number of exceptions to its general exclusion of aliens from the welfare programs. Like the situation that confronted the Supreme Court in *Diaz*, therefore, we have a statutory scheme that, strictly speaking, distinguishes not between citizens and aliens but rather among subclasses within the alien population. *See Diaz*, 426 U.S. at 80. Nevertheless, we do not believe that the exceptions carved out by Congress from its general prohibition against benefits to aliens, detracts from the rationality of the overall statutory scheme. Although Congress did not articulate a reason for each of these exceptions, we must accept Congress' determination because we can discern "a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller*, 509 U.S. at 320. As the Court of Appeals for the Eleventh Circuit explained in *Rodriguez v. United States*, 169 F.3d 1342 (11th Cir. 1999), several of the exceptions extend benefits to aliens who have made special contributions to this Country.[15] It certainly is not irrational for Congress to reward such service or to encourage other aliens to

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[15] In this category are aliens who have assisted the Nation's economy by working at least 40 quarters (10 years), aliens who are veterans or active military personnel, and members of the Hmong and Highland Laotian tribes who provided assistance to the United States during the Vietnam War. *See* 8 U.S.C. § 1612 (a)(2)(B), (C), (K).

make similar contributions in the future. Five of the other exceptions ensure benefits to individuals who have sought refuge in this Country because of especially difficult conditions in their own countries.[16] Certainly, humanitarian concerns can constitute a rational basis for distinguishing among aliens. Although some might disagree with the distinctions Congress has made in this regard, such line-drawing is its prerogative, not the judiciary's. *See Heller*, 509 U.S. at 319. Nor was it irrational for Congress to have excluded from the general ban those already residing in the United States who have an affliction or a condition that makes them particularly vulnerable to poverty.[17] No doubt, there is some question whether Congress included within the excepted class all those who should have been included. Drawing such lines, however, is a legislative task for Congress. "[D]ifferences between the eligible and the ineligible are differences in degree rather than differences in the character of their respective claims." *Diaz*, 426 U.S. at 83-84. The provision permitting the continuation of SSI benefits for those who are already receiving them and who appear to continue to meet the eligibility criteria is similarly not irrational;[18] Congress was entitled to weigh the cost of terminating such a program against the cost of continuation. Finally, members of Indian tribes have a unique historical relationship with the Federal Government, and therefore it certainly was not irrational

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[16] In this category are refugees, asylees, aliens whose deportation has been withheld because of fear of persecution, and certain Cuban, Haitian and Amerasian immigrants. *See* 8 U.S.C. § 1612 (a)(2)(A).

[17] Included in this category are those who resided in the United States at the time of the passage of the statute and who are blind, disabled, or in their old age or youth. *See* 8 U.S.C. § 1612 (a)(2)(E), (F), (I), (J).

[18] *See* 8 U.S.C. § 1612(a)(2)(D), (E), (H).

for Congress to determine that it ought to continue to provide them benefits.[19]

Conclusion

We conclude that the citizenship requirements in § 402 of the Welfare Reform Act do not offend equal protection. We hold that *Mathews v. Diaz* requires the application of rational basis review and that the Act survives that level of scrutiny because it is rationally related to legitimate governmental purposes. Accordingly, the judgment of the district court is affirmed.

AFFIRMED

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

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[19] *See* 8 U.S.C. § 1612(a)(2)(G).

APPENDIX B

[Filed Mar. 31, 1998]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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97 C 4884

CITY OF CHICAGO, *et al.*,
Plaintiffs,

MORRIS ISAAK SINELNIKOV, *et al.*,
Plaintiffs-Intervenors,

v.

DONNA E. SHALALA, *et al.*,
Defendants.

MEMORANDUM AND ORDER

This case challenges the constitutionality of § 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 110 Stat. 2260, codified at 8 U.S.C. §§ 1601, *et seq.* (the "Welfare Reform Act").[1] The City of Chicago and several of its officials filed suit against Donna Shalala, Secretary of Health and Human Services, John Callahan, Acting Commissioner of Social Security, Daniel Glickman, Secretary of Agriculture, Bill Benson, Acting Administrator of Aging,

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1 Section 402 is codified at 8 U.S.C. § 1612(a)(1). The complete text of § 402 is attached as an appendix to this opinion.

and Bruce Vladeck, Administrator of the Health Care Financing Administration. A number of additional plaintiffs, all of whom are legal permanent residents, and a plaintiff organization of ethnic associations with members who are legal permanent residents, subsequently intervened.

The defendants seek to dismiss the complaints filed by the City and the intervenors pursuant to Fed. R. Civ. P. 12(b)(6). For the following reasons, the City is not entitled to relief under the Older Americans Act, 42 U.S.C. §§ 3001, *et seq.*, the plaintiffs-intervenors' supplemental security income program and food stamp program claims are barred by res judicata, and the court rejects the plaintiffs-intervenors' constitutional challenge to the Welfare Reform Act. Accordingly, the governments' motions to dismiss are granted, the motions for preliminary injunctions filed by the plaintiffs and the plaintiffs-intervenors are denied, and this case is dismissed with prejudice.

I. Background

A. The Welfare Reform Act

The Welfare Reform Act is a comprehensive legislative package designed to revamp federally funded welfare programs. *Shvartsman v. Callahan*, No. 97 C 5229, 1997 WL 573404 (N.D. Ill. Sept. 11, 1997), *aff'd by Shvartsman v. Appel*, No. 97-3364, 1998 WL 113198 (7th Cir. Mar. 16, 1998). Its provisions pertaining to legal resident aliens were drafted in light of the increasing number of immigrants on the welfare rolls and the associated sharp increases in costs, and were meant to eliminate the incentive of public benefits as a motive for immigration to the United States. *Id., citing Abreu v. Callahan*, 971 F. Supp. 799 (S.D. N.Y. 1997).

Section 402 of the Welfare Reform Act added a citizenship requirement, subject to certain limited exceptions, to the eligibility criteria of: (1) the Supplemental Security Income program ("SSI"), 42 U.S.C. §§ 1381, *et seq.*;[2] (2) the Food Stamp program, 7 U.S.C. §§ 2011, *et seq.*;[3] (3) the Temporary Assistance for Needy Families program ("TANF"), 42 U.S.C. §§ 601, *et seq.*, and 305 ILCS 5/4-1, *et seq.*;[4] (4) the Medicaid program, 42 U.S.C. §§ 1396, *et seq.*;[5] and 305 ILCS 5/5-1; and (5) the Social Services Block Grant program ("SSBG"), 42 U.S.C. §§ 1397, *et seq.*[6]

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[2] The SSI program provides income assistance for "individuals who have attained age 65 or are blind or disabled," regardless of their prior participation in the labor force. *See* 42 U.S.C. § 1381.

[3] Under this program, the federal government supplements the food purchasing power of low income households by providing coupons to purchase food to eligible households, to help establish and maintain adequate levels of nutrition. 7 U.S.C. §§ 2011, 2013(a). State agencies administer the program by determining who is eligible, distributing coupons pursuant to federal statutory and regulatory requirements, and maintaining appropriate records. 7 U.S.C. § 2020.

[4] The TANF program is the successor to the Aid to Families with Dependent Children program. Under TANF, qualifying families can receive time-limited assistance if they satisfy specified work requirements. *See* 42 U.S.C. § 601, *et seq.* The federal government funds the TANF program, but states have discretion to use the funds to meet the program's goals of promoting the care of children in their own homes or in the homes of relatives, the self-sufficiency of parents, the reduction of out-of-wedlock pregnancies, and the formation and maintenance of two-parent households. 42 U.S.C. § 601(a).

[5] Under the Medicaid program, the federal government provides financial assistance to states that reimburse certain costs of medical treatment of needy persons. 42 U.S.C. § 1396; *Harris v. McRae*, 448 U.S. 297, 301 (1980).

[6] Under the SSBG program, the federal government provides consolidated funds to the states to forward their policy goals, such as the prevention of dependency, neglect, abuse, and exploitation

The Seventh Circuit recently upheld the constitutionality of the Welfare Reform Act, rejecting claims that the limitations on food stamp eligibility imposed by the Welfare Reform Act violated the rights of legal resident aliens to due process. *See Shvartsman v. Appel*, 1998 WL 113198 at *2-6. In *Shvartsman*, a class of impoverished legal permanent resident aliens who had applied for citizenship before their eligibility for benefits terminated under the Welfare Reform Act claimed that the Act violated their due process rights. *Id.* at *2. Specifically, they argued that the statutory transition period, coupled with the INS's delay in processing their citizenship applications, prevented them from having a fair opportunity to prove their continuing eligibility to receive food stamp benefits. *Id.*

The Seventh Circuit rejected this argument, holding that the plaintiffs had failed to establish a property interest. *Id.* at *2-6. The court reasoned that the right to access adjudicatory procedures exists because it serves to protect the plaintiffs' underlying legal claims, not because litigants have property interests in the procedures themselves. *Id.* at *3. The court also explained that the procedures necessary to recertify aliens' eligibility to receive benefits could not themselves create property rights, or the scope of the due process clause would be "virtually boundless." *Id.* at *4. Thus, the court concluded that the plaintiffs had failed to establish a property interest and, therefore, the transition procedures implementing the new citizenship requirement did not violate their due process rights. *Id.* at *6.

In other recent developments, this court's colleague, Judge Leinenweber, recently dismissed a case filed by two

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of children and adults, and inappropriate institutional care. *See* 42 U.S.C. § 1397, *et seq.*

resident legal aliens whose applications for SSI benefits were filed prior to, but adjudicated after the effective date of the citizenship requirement. *Zizumbo v. Callahan*, No. 97 C 4971 (N.D. Ill. Mar. 18, 1998). Judge Leinenweber found that the case was moot because the Commissioner of Social Security changed its policy regarding the retroactivity of the Welfare Reform Act's citizenship requirement and granted benefits to the plaintiffs.

B. The Parties' Claims

The court notes that its task would be greatly simplified if it could dispense with threshold jurisdictional issues and simply reach the merits under the doctrine of hypothetical jurisdiction. This doctrine allowed federal courts to proceed immediately to the merits where the merits are more easily resolved than the jurisdictional issues and the prevailing party on the merits would also prevail if jurisdiction were lacking. The Supreme Court, however, has recently abolished this doctrine. *Steel Co. v. Citizens for a Better Environment*, 118 S.Ct. 1003, 1012-16 (1998). Thus, the court will describe the parties' claims and sort out the various bars to the plaintiffs and plaintiffs-intervenors' claims before reaching the merits of the few claims that are ultimately left. The court notes, however, that its merits analysis would have applied equally to all of the constitutional challenges to the Welfare Reform Act.

1. The Plaintiffs

In its three-count complaint, the City challenges the constitutionality of the Welfare Reform Act, arguing that it violates the Fifth Amendment due process and equal protection rights of permanent legal resident aliens by prohibiting those persons from receiving food stamps and Supplemental Security Income ("SSI"). The City also

argues that the Welfare Reform Act purports to authorize the State of Illinois to discriminate against permanent legal resident aliens and thus violates the due process and equal protection rights of permanent legal resident aliens and violates the principle of separation of powers. Finally, the City argues that the defendants have failed to comply with the Older Americans Act, 42 U.S.C. §§ 3001, *et seq.* ("OAA"). Specifically, the City contends that the defendants have failed to prepare an analysis of the impact of the Welfare Reform Act on individuals protected by the OAA, and that this failure harms the City in its capacities as an Area Agency of Aging and a municipality.

The City seeks a declaration that the Welfare Reform Act violates their rights to due process and equal protection, as well as the principle of separation of powers. They ask the court to enjoin the defendants from enforcing the Welfare Reform Act or otherwise denying benefits to previously eligible legal permanent resident aliens. Finally, they seek a declaration that the defendants violated the OAA.

The intervening plaintiffs claim that they are "members of a discrete and insular minority" and that they have been "singled out for deprivation of life-sustaining benefits" by the Welfare Reform Act. Intervenors' First Amended Complaint, ¶ 3. They claim that the Welfare Reform Act violates their Fifth Amendment due process rights, and seek an injunction restoring their lost benefits and preventing the denial or termination of benefits due to the Welfare Reform Act's citizenship requirement.

2. The Defendants

The defendants seek to dismiss both the City and the intervenors' complaints. With respect to the City, the defendants contend that this court lacks subject matter jur-

isdiction over the City's complaint because a municipality lacks standing to bring an action against the federal government in a *parens patriae* capacity. The defendants also argue that the City has no constitutional right under the Fifth Amendment or elsewhere to receive funding from the federal government to address the social and economic ills affecting the City. Finally, they note that, in any event, Congress has the power to condition aliens' eligibility for welfare benefits on the character and duration of their residence and to draw distinctions between aliens and citizens, citing to *Mathews v. Diaz*, 426 U.S. 67, 82-83 (1976).

With respect to the intervenors, the defendants contend that the intervenors lack standing to challenge the Social Services Block Grant, Temporary Assistance for Needy Families, and Medicaid programs. They also argue that the intervenors' due process claims are barred by res judicata, since there is identity of the parties and causes of action between this case and *Shvartsman*. In addition they argue that the intervenors' equal protection claims are barred since they could have been raised in *Shvartsman*. Finally, they argue that the intervenors' Welfare Reform Act claims fail because Congress may draw distinctions among groups of aliens or between aliens and citizens, again relying on *Mathews v. Diaz*.

II. Discussion

A. Standard on 12(b)(6) Motion to Dismiss

In ruling on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court must assume the truth of all facts alleged in the complaint, construing the allegations liberally and viewing them in the light most favorabe to the plaintiff. *See, e.g., McMath v. City of Gary*, 976 F.2d 1026, 1031 (7th Cir. 1992); *Gillman v. Burlington*

Northern R.R. Co., 878 F.2d 1020, 1022 (7th Cir. 1989). Dismissal is properly granted only if it is clear that no set of facts which the plaintiff could prove consistent with the pleadings would entitle the plaintiff to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Kunik v. Racine County, Wis.*, 946 F.2d 1574, 1579 (7th Cir. 1991), *citing Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

The court will accept all well-pled factual allegations in the complaint as true. *Miree v. DeKalb County*, 433 U.S. 25, 27 n.2 (1977). In addition, the court will construe the complaint liberally and will view the allegations in the light most favorable to the non-moving party. *Craigs, Inc. v. General Electric Capital Corp.*, 12 F.3d 686, 688 (7th Cir. 1993). However, the court is neither bound by the plaintiff's legal characterization of the facts, nor required to ignore facts set forth in the complaint that undermine the plaintiff's claims. *Scott v. O'Grady*, 975 F.2d 366, 368 (7th Cir. 1992), *cert. denied*, 508 U.S. 942 (1993).

B. The City of Chicago—Standing & The Older Americans Act

The defendants raise a number of challenges to the City's standing and, thus, argue that the City should be dismissed from this case. In response, the City argues that, since the plaintiffs-intervenors have standing, the court need not determine whether it has standing and may reach the merits of its claims with respect to the Welfare Reform Act. The court will not examine the City's challenge to the constitutionality of the Welfare Reform Act, as it is reaching the merits of that claim in any event.[7]

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[7] As discussed *infra*, the only intervenors not barred by res judicata are the members of the non-SSI class who are raising

The court must, however, determine whether the City has standing to present a claim based on the Older Americans Act, 42 U.S.C. § 3001, *et seq.* ("OAA"), as this argument is not pressed by the plaintiffs-intervenors.

The City contends that standing is proper as to its OAA claim, citing to *City of Chicago v. Lindley*, 66 F.3d 819 (7th Cir. 1995). Specifically, the City contends that it is an Area Agency on Aging, through its Department on Aging, and thus is entitled to advocate for the rights of its elders. In response, the government asserts that *Lindley* is inapposite because the City's finances will not be affected even if it were to prevail on its OAA claim. The government also contends that, even if standing did exist, the City may only serve as an advocate for the elderly at the state and local, as opposed to the federal, level.

The court agrees with the City that *Lindley*, in certain instances, could confer standing on the City to raise an OAA claim. *Lindley*, 66 F.3d at 824 n.6. However, this victory is pyrrhic, as the court also agrees with the government that the City has failed to demonstrate that the alleged failure to comply with the OAA's analysis provisions will cause it any cognizable harm. Put another way, whether the defendants "collaboratively analyze, in writing, the effect of withdrawing" SSI and food stamp benefits on elderly Chicago residents, the amount of money that the City receives under the OAA will not change. The City's response brief does not attempt to refute this point, and it is well established that a party must have an injury-in-fact to have standing. *See, e.g., Whitaker v. Ameritech Corp.*, 129 F.3d 952, 959 (7th Cir. 1997).

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non-food stamp claims. Thus, the City's reliance on the intervenors' standing would not, as the City contends, completely solve its standing problem.

In any event, the OAA authorizes the City to act as an advocate for the elderly at the state and local level, rather than at the federal level. *See* 42 U.S.C. § 3026(a) (describing parameters of plans developed by each area agency on aging); *see generally Lindley v. City of Chicago*, 66 F.3d 819 (7th Cir. 1995). At the federal level, Congress has designated the Administration on Aging ("AoA") within the United States Department of Health and Human Services to serve as an advocate for the elderly. *See* 42 U.S.C. § 3011(a); *see also* § 3013(a)(1) (the AoA shall "coordinate, advise, consult with, and cooperate with the head of each department, agency, or instrumentality of the Federal Government proposing or administering programs or services substantially related to the objectives of this chapter, with respect to such programs or services").

Thus, the City is not authorized to act as an advocate for the elderly generally at the federal level, absent actual injury to itself. Because the City lacks standing to raise its OAA claims, the court will not consider the parties' arguments regarding the merits of these claims.

B. The Intervening Plaintiffs

The intervening plaintiffs consist of two classes.[8] The SSI Class is composed of: (1) Illinois residents who are legal permanent resident aliens; (2) who made claims

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[8] Intervention presupposes the existence of a suit over which the court may exercise subject matter jurisdiction. *See, e.g., Hofheimer v. McIntee*, 179 F.2d 789, 792 (7th Cir.), *cert. denied sub nom.*, 340 U.S. 817 (1950). As noted above, the City may not have standing to challenge the Welfare Reform Act's constitutionality and lacks standing to raise its OAA claims. However, given that the court is reaching the merits of the constitutional issue in any event and has already permitted the intervenors to participate in this suit, judicial economy would not be served by requiring the intervenors to raise their claims in a separate suit. Accordingly, the court will reach the merits of the intervenors' claims.

under the SSI program or have a pending claim as of August 22, 1996, when the Welfare Reform Act went into effect; and (3) whose benefits were terminated or whose claims for benefits were denied because they were not citizens. In turn, the non-SSI class is composed of: (1) Illinois residents who are legal permanent resident aliens; (2) who made claims under the food stamp, TANF, Medicaid, and SSBG programs or have pending claims as of August 22, 1996, when the Welfare Reform Act went into effect; and (3) whose benefits were terminated or whose claims for benefits were denied because they were not citizens.[9] As discussed below, res judicata bars the claims of the SSI class, collateral estoppel and/or res judicata bars the claims of the non-SSI class, while the claims of the SSI class must be dismissed for lack of standing.

1. The Effect of *Shvartsman* & *Zizumbo*

The defendants assert that res judicata bars the claims raised by the non-SSI class. Because the prior cases leading to the possible application of res judicata (*Shvartsman* and *Zizumbo*) were brought in federal court, federal rules of res judicata determine whether this suit is barred. *Zahran v. Frankenmuth Mutual Insurance Co.*, No. 94 C 4827, 1996 WL 182563 *3 (N.D. Ill. Apr. 15, 1996), *citing Barnett v. Stern*, 909 F.2d 973, 977 (7th Cir. 1990). As discussed more fully below, the court agrees with the defendants that federal rules of res judicata bar the claims of any member of the non-SSI class who wishes to raise food stamp claims. In addition, res judicata bars the claims of the SSI class.

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[9] According to the plaintiffs-intervenors, they separated the SSI class from the other class as claims for SSI "involve a jurisdictional requirement not necessary in the claims for any other benefits." *See* 42 U.S.C. § 405(g).

Res judicata, also known as claim preclusion, bars successive suits raising the same cause of action. Thus, if a litigant brings a second suit based on a previously raised cause of action, claim preclusion bars all issues that were previously litigated or could have been litigated in the earlier case. *See, e.g., Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326 n. 5 (1979); *Ray v. Indiana & Michigan Electric Co.*, 758 F.2d 1148, 1150 (7th Cir. 1985).[10] Claim preclusion applies when: (1) the parties or their privies in the two cases are the same; (2) the cause of action raised in the two cases is the same; and (3) the court in the earlier case entered a final judgment on the merits. *Brzostowski v. Laidlaw Waste Systems, Inc.*, 49 F.3d 337, 338 (7th Cir. 1995) (citations omitted); *Hartke v. Chicago Board of Election Commissioners*, 651 F. Supp. 86, 88 (N.D. Ill. 1986). If res judicata applies, a party cannot assert claims they raised or could have raised in the prior action, even in the context of a class action lawsuit. *Cooper v. Federal Reserve Bank*, 467 U.S. 867, 874 (1984); *Mars Steel Corp. v. Continental Illinois Nat. Bank and Trust Co. Of Chicago*, 834 F.2d 677, 681 (7th Cir. 1987) (suit settled as a class action has a preclusive effect on class members).

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[10] On the other hand, collateral estoppel, or issue preclusion, prohibits relitigation of previously decided issues, but does not bar suits arising from the same cause of action. *See Allen v. McCurry*, 449 U.S. at 94 ("[o]nce a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a later suit on a different cause of action involving a party to the first case.") Specifically, issue preclusion applies when: (1) the issue at stake is identical to an issue in the prior litigation; (2) the issue was actually litigated in the earlier case; (3) the determination of the issue in the earlier case was essential to the judgment in that case; and (4) the party precluded from relitigating the issue was represented in the prior litigation. *See, e.g., La Preferida, Inc. v. Cerveceria Modelo, S.A. de C.V.*, 914 F.2d 900, 906 (7th Cir. 1990), *citing Klingman v. Levinson*, 831 F.2d 1292, 1295 (7th Cir. 1987).

a. Identity of the Parties

With respect to all members of the class asserting food stamp act claims, identity of the parties exists because the class certified in *Shvartsman* (the "*Shvartsman* class") overlaps the classes certified in this case and, to the extent that it does not, the doctrine of virtual representation applies. The *Shvartsman* class consists of permanent resident aliens in this Circuit: (1) who were receiving food stamps at the time the Welfare Reform Act was enacted; (2) who have been or will be disqualified from receiving food stamps based on the new citizenship requirement in the Welfare Reform Act; and (3) who had applications for naturalization pending with the INS as of the date of recertification of their eligibility but had not yet received a final disposition of their applications from the INS. *Shvartsman*, 1997 WL 573404 at *3. In turn, the non-SSI class in this action includes all permanent resident aliens in Illinois who have applied or will apply for SSI, food stamps, TANF, Medicaid, or SSBG but will be ineligible based on the new citizenship requirement in the Welfare Reform Act.

Thus, there are three differences between the non-SSI class in this action and the *Shvartsman* class. First, the *Shvartsman* class extends to the circuit, while the classes in this case are limited to Illinois. Second, with respect to food stamp claims, the members of the *Shvartsman* class had applications for naturalization pending with the INS as of the date of recertification of their eligibility but had not yet received a final disposition of their applications. In contrast, the members of the class in this case are simply ineligible for benefits due to the citizenship requirement, and are not necessarily midway through the naturalization process. Third, the *Shvartsman* class limited their claims to the implementation of the citizenship

requirement with respect to the food stamp program, while the classes here wish to challenge the Welfare Reform Act's application to the SSI, TANF, Medicaid, and SSBG programs, as well as the food stamp program.

i. Identity of the Parties—Food Stamp Claims

For res judicata purposes, the members of the non-SSI class in this case who wish to raise food stamp claims share identity of the parties with the class in *Shvartsman*. The Illinois members of the *Shvartsman* class and the non-SSI class members in this case who wish to raise food stamp claims overlap, as the Illinois members of the *Shvartsman* class are a subset of the non-SSI class in this case. By definition, the non-SSI class members in this case who wish to raise food stamp claims cannot prevail if the *Shvartsman* class cannot prevail because they are worse off than the members of the *Shvartsman* class. Specifically, they are simply ineligible for benefits (because they are not citizens), while the members of the *Shvartsman* class are ineligible, but may become eligible due to their pending naturalization petitions.

The fact that the class members in *Shvartsman* limited their challenges to the implementation of the citizenship requirement vis-a-vis the food stamp program does not alter this conclusion. The class members in *Shvartsman* were equally able to raise the food stamp claims asserted in this suit but, instead, limited their claims to the implementation of the citizenship requirement. Counsel for the class in *Shvartsman* also represents the plaintiffs-intervenors here, so there is no question that the decision to limit the claims raised by a class with virtually identical interests was strategic.

"Under the doctrine of virtual representation, a person may be bound by a judgment even though not a party if

one of the parties to the suit is so closely aligned with his interests as to be his virtual representative" *People Who Care v. Rockford Board of Education*, 68 F.3d 172, 177 (7th Cir. 1995). In other words, to be bound by res judicata, the interests of the party in the second suit must be "so parallel" to the interest of the party in the first suit so that the first party becomes the second party's virtual representative. *Id.*

The doctrine of virtual representation generally applies to parties raising identical legal arguments, to ensure that a court has had an opportunity to consider the party's arguments. *Rush v. Superintendent of Police*, No. 93 C 1675, 1994 WL 114847 (N.D. Ill. Apr. 4, 1994). Here, the class in *Shvartsman* could have challenged the citizenship requirement as well as the implementation of that requirement, but chose not to do so. This tactical decision, by the same attorneys representing the classes in this case, raises the interesting question of whether a class does not share an identity of interest with a prior class where counsel for both classes intentionally limited the first class' claims.

The court believes the answer is "yes," because members of a class may not file successive cases raising a new legal challenge to the same statute that could have been previously raised and claim that there is no identity of the parties because the class representatives are different. *Alexander v. Chicago Park District*, 773 F.2d 850, 854 (7th Cir. 1985). Moreover, the class members in *Shvartsman* had every incentive to challenge the citizenship requirement in the Welfare Reform Act. *See Rush*, 1994 WL 114847 *5 (virtual representation barred relitigation of claims raised in a prior case where the enactment of an ordinance after the first case was decided raised the stakes).

The court does not agree with the government, however, that res judicata bars the non-food stamp claims of all non-SSI class members who are also raising food stamp claims. It is unclear whether the *Shvartsman* class members were also receiving welfare benefits other than food stamps. A class member in this case raising food stamp and TANF claims, for example, would therefore not necessarily have had an opportunity to have his or her claims litigated vigorously by a similarly situated class member. The doctrine of virtual representation thus does not apply to non-food stamp claimants.

ii. Identity of the Parties—Other Claims

The SSI class, by definition, does not overlap with the *Shvartsman* class as the members of that class only seek to raise SSI claims. It does, however, align with the plaintiffs in *Zizumbo*, who were challenging the citizenship requirement with respect to Social Security benefits. Reading the complaint in the light most favorable to the plaintiffs-intervenors, the non-SSI class breaks down into three subsets: (1) persons seeking to raise only food stamp claims; (2) persons wishing to raise food stamp and non-food stamp claims; and (3) persons seeking to raise non-food stamp claims (*i.e.*, Nurlela Ismail).

To the extent that any members of the non-SSI class wish to bring food stamp claims, they share identity with the *Shvartsman* class and thus, for the reasons discussed below, had to bring all food stamp claims arising from the citizenship requirement at that time. To take the reader of this opinion out of suspense, this is so because, in a nutshell, the citizenship requirement's application to the food stamp program could have and should have been raised in *Shvartsman* along with the challenge to its application.

This decision is in harmony with the purpose underlying the virtual representation rule. That purpose—to block repetitive suits where different parties raise the same claims—would not be satisfied by allowing members of the same class to challenge the citizenship requirement in multiple suits. The plaintiffs-intervenors' argument to the contrary—that challenging the citizenship requirement in *Shvartsman*, as well as its implementation, would lead to two courts considering the citizenship issue—is simply incorrect. Res judicata would clearly block any such suit. The fact that the *Shvartsman* class limited their claims to implementation, however, does not compel this court to conclude that the non-SSI class members in this suit who wish to raise food stamp claims are free to do so despite *Shvartsman*. Again, this result would lead to multiple suits arising from the same cause of action.

Thus, all members of the non-SSI class who wish to raise food stamp claims share identity with the *Shvartsman* class, and all members of the SSI class who wish to raise SSI claims share identity with the plaintiffs in *Zizumbo*. There is, however, no identity of the parties with respect to the non-food stamp and non-SSI claims (*i.e.*, TANF, SSBG, and Medicaid). As the food stamp and SSI claimants share identity with the plaintiffs in *Shvartsman* and *Zizumbo*, respectively, the court next considers whether the defendants share identity. The answer is obviously yes, as the defendants in this case are also defendants in *Shvartsman* and Callahan is a defendant in this case as well as *Zizumbo*. Thus, the court turns to whether the claims already litigated in *Shvartsman* and *Zizumbo* share identity with the claims of the food stamp and SSI claimants in this case.

b. Identity of the Cause of Action

The government argues that this lawsuit and *Shvartsman* involve the same claim or cause of action. Specifically, it contends that the attorneys for the plaintiffs-intervenors here (who also represented the plaintiffs in *Shvartsman*) could have challenged the Welfare Reform Act's citizenship restrictions relating to the food stamp, SSI, TANF, and Medicaid claims in *Shvartsman*. The plaintiffs-intervenors vigorously object, arguing that *Shvartsman* addressed the implementation of the citizenship requirement in the Welfare Reform Act with respect to food stamp recipients, while this case challenges the citizenship requirement itself. The defendants do not claim that the SSI claims in this case overlap with the SSI claims in *Zizumbo*, although this appears to be the case. For the sake of clarity, the court will discuss *Shvartsman* and *Zizumbo* separately.

The Seventh Circuit employs the "same transaction" test to define a "cause of action" for res judicata purposes. *See, e.g., Car Carriers, Inc. v. Ford Motor Co.*, 789 F.2d 589, 593 (7th Cir. 1986); *Alexander*, 773 F.2d 850, 854 (7th Cir. 1985). Under this test, a "cause of action" consists of " 'a single core of operative facts' which would give rise to a remedy." *Car Carriers*, 789 F.2d at 593, *quoting Alexander*, 773 F.2d at 854. The "same transaction" test is fact-oriented and requires parties to bring all claims arising from a transaction causing injury in one action. *Car Carriers*, 789 F.2d at 593; *Andersen v. Chrysler Corp.*, 99 F.3d 846, 852-54 (7th Cir. 1996).

The plaintiffs-intervenors attempt to avoid the barrier posed by the "same transaction" test by distinguishing the claims raised in this case with the claims raised in *Shvartsman*. They note that the Seventh Circuit does not employ a "but for" test when determining whether claims

arise from the same transaction, citing to the banana peel analogy in *Hermann v. Cencom Cable Associates, Inc.*, 999 F.2d 223, 226 (7th Cir. 1993). In that case, a discharged employee sought to file a Title VII suit after filing a COBRA suit. The Seventh Circuit held that res judicata did not bar the Title VII suit, just as a plaintiff who slipped on a banana peel while leaving work after being wrongfully terminated would have two separate actions—one sounding in negligence and one based on the termination. *Id.*

Unlike the banana peel example, however, this case is based on the same transaction underlying the prior case—the Welfare Reform Act's new citizenship requirement. *Cf. Andersen v. Chrysler Corp.*, 99 F.3d at 853 (res judicata did not apply because "each of the claims in the two suits involved different acts between different parties at different times). Thus, the claims of the non-SSI class raising food stamp claims' argument that *Shvartsman* involved the implementation of the citizenship requirements relating to food stamps and this case challenges the constitutionality of the citizenship requirement itself, as applied to the various affected welfare programs, does not save them. Similarly, their argument that this case could not be decided under the facts adduced in *Shvartsman* is unavailing.

The problem with these arguments is that they essentially amount to a contention that res judicata only bars successive cases raising previously adjudicated claims. This would be correct if the court was faced with collateral estoppel (also known as issue preclusion), but falls short given that res judicata (also known as claim preclusion) is at issue. Put another way, the doctrine of res judicata proscribes a divide-and-conquer approach to litigation. Such an approach is known as claim splitting, and

the Seventh Circuit has admonished litigants to proceed at their own risk when splitting claims:

> This court deprecates the practice of filing two suits over one injury . . . . Plaintiffs hope that more suits will improve their chances: they seek the better of the outcomes. To discourage the tactic, judges award plaintiffs not the better outcome but the first outcome: whichever suit goes to judgment first is dispositive, and the doctrine of claim preclusion (res judicata) requires the other court to dismiss this litigation. [citations omitted]. Instead of improving plaintiffs' chances, claim-splitting reduces them—for the first court will not have entertained all of the arguments, and the missing ones may have been winners.

Rogers v. Desiderio, 58 F.3d 299, 300 (7th Cir. 1995).

As noted above, the injury underlying this action, as well as *Shvartsman*, is the Welfare Reform Act's new citizenship requirement. The citizenship requirement negatively impacted a number of welfare programs, including the food stamp program. Nevertheless, res judicata prevents the food stamp claimants from filing multiple suits attacking the citizenship requirement based on different legal theories. *See Wilson v. City of Chicago*, 120 F.3d 681, 687 (7th Cir. 1997) ("[t]wo claims arising from the same facts are one claim for res judicata purposes, and may not be split"); *Shaver v. F.W. Woolworth Co.*, 840 F.2d 1361, 1365 (7th Cir. 1988) (where an injury gives rise to different theories of recovery, res judicata "prevents a plaintiff from splitting a cause of action by using several theories of recovery in separate lawsuits"); *Zahran v. Frankenmuth Mutual Ins. Co.*, No. 94 C 4827, 1996 WL 182563 *4 (N.D. Ill. Apr. 15, 1996).

To sum up, the attempt of the food stamp claimants in this case to challenge the loss of benefits under different programs affected by the citizenship requirement is, in essence, a successive suit arising out of the citizenship requirement in the Welfare Reform Act, since it is based on different legal theories arising from the same injury. Accordingly, the "identity of claims" requirement of res judicata has been satisfied.

The identity of issues question presented by *Zizumbo* is much simpler. The plaintiffs in *Zizumbo* consisted of two permanent resident aliens who filed applications for SSI benefits prior to the effective date of the new citizenship requirement, and had their applications adjudicated after that date. The SSI class in this case is composed of: (1) Illinois residents who are legal permanent resident aliens; (2) who made claims under the SSI program or have a pending claim as of August 22, 1996, when the Welfare Reform Act went into effect; and (3) whose benefits were terminated or whose claims for benefits were denied because they were not citizens.

Members of the SSI class are similarly situated to the plaintiffs in *Zizumbo*. In fact, the *Zizumbo* plaintiffs would have been members of the SSI class. The court also notes parenthetically that one of the attorneys for the plaintiffs in *Zizumbo* also represents the plaintiffs-intervenors in this case. Thus, identity of the parties and the issues exists for the SSI class and the food stamp claimant members of the non-SSI class.

c. Finality

Finality, the last prong required for res judicata to apply, clearly exists with respect to the food stamp claimants and the SSI class. The district court entered a final judgment in *Shvartsman*, which was affirmed by the Sev-

enth Circuit, and a final judgment has also been entered in *Zizumbo*. Accordingly, res judicata bars the claims of all members of the non-SSI class who are challenging the citizenship requirement in the Welfare Reform Act in the context of the food stamp program, as well as the SSI class.

2. TANF, Medicaid, and SSBG Claims

For the purposes of the defendants' 12(b)(6) motion to dismiss, the court will accept all well-pleaded factual allegations in the plaintiffs-intervenors' complaint as true. The court also notes that, if the food stamp claimants and SSI class members were not barred by res judicata, the court's discussion of the merits would apply equally to them. The court agrees with the other courts to have considered this issue that the Welfare Reform Act is subject to rational basis review. *Abreu v. Callahan*, 971 F. Supp. 799 (S.D.N.Y. 1997); *Rodriguez v. United States*, 983 F. Supp. 1445 (S.D. Fla. 1997); *Kiev v. Glickman*, No. 97-1117 (MJD/AJB), 1998 WL 34650 (D. Minn. Jan. 27, 1998).

The rational basis standard applies because Congress has plenary powers over immigration matters, as "over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). Alienage-based restrictions on eligibility for welfare programs are within the ambit of immigration matters. *Mathews v. Diaz*, 426 U.S. 67, 80 (1976). Indeed, the Supreme Court has specifically noted that Congress need not "provide all aliens with the welfare benefits provided to its citizens. *Id.* at 82. Moreover, federal legislation regarding alienage-based immigration laws is not comparable to state legislation, which may be subject to different standards of review. *Abreu*, 971 F. Supp. at 810. In short, the court

agrees with the detailed and well-reasoned opinions in *Abreau, Rodriguez,* and *Kiev* regarding the proper standard of review.

Because rational basis scrutiny is the appropriate standard of review, the court turns to whether the Welfare Reform Act is indeed rational. Legislation must be upheld if there is "any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). The Seventh Circuit instructs that, when determining whether a statute survives rational basis review, courts do not have a "license . . . to judge the wisdom, fairness, or logic of legislative choices." *National Paint & Coatings Ass'n v. City of Chicago*, 45 F.3d 1124, 1127 (7th Cir. 1995), *citing Heller v. Doe*, 509 U.S. 312 (1993).

Congress enacted the Welfare Reform Act to encourage self-reliance and ease the burdens on the welfare system, stating that:

> The Congress makes the following statements concerning national policy with respect to welfare and immigration:
>
> (1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.
>
> (2) It continues to be the immigration policy of the United States that—
>
> (A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and

(B) the availability of public benefits not constitute an incentive for immigration to the United States.

(3) Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.

(4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.

(5) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.

(6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.

(7) With respect to the State authority to make determinations concerning the eligibility of qualified aliens for public benefits in this chapter, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.

8 U.S.C. § 1601.

Restricting non-citizens' ability to receive welfare benefits bears a rational relationship to achieving these goals

as there appears to be a logical connection between the means (restricting aliens' access to welfare programs) and Congress' end (fostering self-reliance and easing the burden on the welfare system). Moreover, the fact that the Welfare Reform Act impacts certain permanent resident aliens by denying them benefits unless and until they become citizens does not affect the court's conclusion that the Welfare Reform Act survives rational basis review. It is well established that Congress may address the part of a problem that it deems the most acute. *See, e.g., Williamson v. Lee Optical Co. Of Oklahoma*, 348 U.S. 483, 489 (1955); *New Orleans v. Dukes*, 427 at 305.

In addition, Congressional line drawing necessarily implies that people with differing circumstances will be placed on either side of the line. *Mathews*, 426 U.S. at 83. This court is not empowered to second-guess Congress' decision as to where to place that line. Despite the fact that the plaintiffs contend that the Welfare Reform Act will harm legal resident aliens, this court cannot act as a super-Congress and rewrite legislation that is rationally related to Congress' stated purpose. *Yellow Cab Co. v. City of Chicago*, 919 F. Supp. 1133, 1138 (N.D. Ill. 1996), *citing City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (in applying the rational basis test, a court "may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations").

Finally, in the interests of completeness, the court briefly notes that it disagrees with the plaintiffs-intervenors' argument that the Welfare Reform Act should be invalidated because its alienage restrictions were based on animus towards noncitizens. It is legitimate to distinguish between citizens and aliens, as demonstrated by the fact that Title 8 of the United States Code is founded on the legitimacy of this distinction. *Mathews*, 426 U.S. at 85.

Moreover, as discussed above, the goals of the Welfare Reform Act appear to be rationally linked to the purpose identified by Congress. Thus, the plaintiffs-intervenors cannot establish that the Welfare Reform Act is "inexplicable by anything but animus toward the class that it affects." *Romer v. Evans*, 116 S.Ct. 1620, 1627 (1996); *see also University Professionals of Illinois, Local 4100, AFT-AFT, AFL-CIO v. Edgar*, 114 F.3d 665 (7th Cir. 1997) ("[w]hether or not we agree with a legislature's presumed judgment is of little moment, for we must only recognize the legitimacy of the retrospective logic"). Thus, the provisions of the Welfare Reform Act affecting non-citizens' ability to obtain welfare benefits must stand.

III. Conclusion

For the above reasons, the City is not entitled to relief under the Older Americans Act, 42 U.S.C. §§ 3001, *et seq.*, the plaintiffs-intervenors' supplemental security income program and food stamp program are barred by res judicata, and the court rejects the plaintiffs-intervenors' constitutional challenge to the Welfare Reform Act. Accordingly, the governments' motions to dismiss [11-1 and 31-1] are granted, and this case is dismissed with prejudice. The motions for a preliminary injunction [5-1 and 15-1] are denied as moot, as are all other pending motions.

DATE: 3/31/98

/s/ Blanche M. Manning
BLANCHE M. MANNING
United States District Court

APPENDIX A

UNITED STATES CODE ANNOTATED
TITLE 8. ALIENS AND NATIONALITY
CHAPTER 14—RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS
SUBCHAPTER I—ELIGIBILITY FOR FEDERAL BENEFITS

§ 1612. Limited Eligibility of qualified aliens for certain Federal programs

(a) Limited eligibility for specified Federal programs

(1) In general

Notwithstanding any other provision of law and except as provided in paragraph (2), an alien who is a qualified alien (as defined in § 1641 of this title) is not eligible for any specified Federal program (as defined in paragraph (3)).

(2) Exceptions

(A) Time-limited exception for refugees and asylees

(i) SSI

With respect to the specified Federal program described in paragraph (3)(A), paragraph (1) shall not apply to an alien until 7 years after the date—

(I) an alien is admitted to the United States as a refugee under § 207 of the Immigration and Nationality Act [8 U.S.C.A. § 1157]3;

(II) an alien is granted asylum under § 208 of such act [8 U.S.C.A. § 1158];

(III) an alien's deportation is withheld under § 243(h) of such Act [8 U.S.C.A. § 1253(h)] (as in effect immediately before the effective date [April 1, 1997] of § 307 of division C of Public Law 104-208) or § 241 (b)(3) [8 U.S.C.A. § 1251(b)(3)] of such Act (as amended by § 305(a) of division C of Public Law 104-308);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in § 501(e) of the Refugee Education Assistance Act of 1980); or

(V) an alien is admitted to the United States as an Amerasian immigrant pursuant to § 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in § 101(e) of Public Law 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended).

(ii) Food stamps

With respect to the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to an alien until 5 years after the date—

(I) an alien is admitted to the United States as a refugee under § 207 of the Immigration and Nationality Act [8 U.S.C.A. § 1157];

(II) an alien is granted asylum under § 208 of such act [8 U.S.C.A. § 1157];

(III) an alien's deportation is withheld under § 243(h) of such Act [8 U.S.C.A. § 1253(h)] (as in effect immediately before the effective date [April 1, 1997] of § 307 of division C of Public Law 104-208) or § 241 (b)(3) of such Act [8 U.S.C.A. § 1251 (b)(3)] (as amended by § 305(a) of division C of Public Law 104-208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in § 501(e) of the Refugee Education Assistance Act of 1980); or

(V) an alien is admitted to the United States as an Amerasian immigrant as described in clause (i)(V).

(B) Certain permanent resident aliens

Paragraph (1) shall not apply to an alien who—

(i) is lawfully admitted to the United States for permanent residence under the Imigration and Nationality Act [8 U.S.C.A. § 1101 et seq.]; and

(ii)(I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C.A. §401 et

seq.] or can be credited with such qualifying quarters as provided under § 1645 of this title, and (II) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under § 1613 of this title) during any such period.

(C) Veteran and active duty exception

Paragraph (1) shall not apply to an alien who is lawfully residing in any State and is—

(i) a veteran (as defined in §§ 101, 1101, or 1301, or as described in § 107 of Title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of § 5303 A(d) of title 38, United States Code,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of § 1304 of title 38, United States Code.

(D) Transition for aliens currently receiving benefits

(i) SSI

(I) In general

With respect to the specified Federal program described in paragraph (3)(A), during the period beginning on August 22, 1996 and ending on September 30, 1998, the Commissioner of Social Security shall redetermine the eligibility of any individual who is receiving benefits under such program as of August 22, 1996 and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.

(II) Redetermination criteria

With respect to any redetermination under subclause (I), the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under such program.

(III) Grandfather provision

The provisions of this subsection and the redetermination under subclause (I), shall only apply with respect to the benefits of an individual described in subclause (I) for months beginning on or after September 30, 1998.

(IV) Notice

Not later than March 31, 1997, the Commissioner of Social Security shall notify an individual described in subclause (I) of the provisions of this clause.

(ii) Food stamps

(I) In general

With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997, to an alien who received benefits under such program on August 22, 1996, unless such alien who received benefits under such program on August 22, 1996, unless such alien is determined to be ineligible to receive such benefits under the Food Stamp Act of 1977 [7 U.S.C.A. § 2011 et seq.]. The State agency shall recertify the eligibility of all such aliens during the period beginning April 1, 1997, and ending August 22, 1997.

(II) recertification criteria

With respect to any recertification under subclause (I), the State agency shall apply the eligibility criteria for applicants for benefits under such program.

(III) Grandfather provision

The provisions of this subsection and the recertification under subclause (I) shall only apply with respect to the eligibility of an alien for a program for months beginning on or after the date of recertification, if on August 22, 1996 the alien is lawfully residing

in any State and is receiving benefits under such program on August 22, 1996.

(E) Aliens receiving SSI on August 22, 1996

With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to an alien who is lawfully residing in the United States and who was receiving such benefits on August 22, 1996.

(F) Disabled aliens lawfully residing in the United States on August 22, 1996

With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to an alien who—

(i) was lawfully residing in the United States on August 2, 1996; and

(ii) is blind or disabled, as defined in §§ 1382(a)(2) or 1382(a)(3) of Title 42.

(G) SSI Exception for certain Indians

With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), § 1611(a) of this title and paragraph (1) shall not apply to any individual—

(i) who is an American Indian born in Canada to whom the provisions of § 1359 of this title apply; or

(ii) who is a member of an Indian tribe (as defined in § 450b(e) of Title 25).

(H) SSI Exception for certain recipients on the basis of very old applications

With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to any individual—

(i) who is receiving benefits under such program for months after July 1996 on the basis of an application filed before January 1, 1979; and

(ii) with respect to whom the Commissioner of Social Security lacks clear and convincing evidence that such individual is an alien ineligible for such benefits as a result of the application of this section.

(3) Specified Federal program defined

For purposes of this chapter, the term "specified Federal program" means any of the following:

(A) SSI

The supplemental security income program under title XVI of the Social Security Act [42 U.S.C.A. § 1381 et seq.], including supplementary payments pursuant to an agreement for Federal administration under § 1616(a) of the Social Security Act [42 U.S.C.A. § 1382e(a)] and payments pursuant to an agreement entered into under § 212(b) of Public Law 93-66.

(B) Food stamps

The food stamp program as defined in § 2012(h) of Title 7.

(b) Limited eligibility for designated Federal programs

(1) In general

Notwithstanding any other provision of law and except as provided in § 1613 of this title and paragraph (2), a State is authorized to determine the eligibility of an alien who is a qualified alien (as defined in § 1641 of this title) for any designated Federal program (as defined in paragraph (3)).

(2) Exceptions

Qualified aliens under this paragraph shall be eligible for any designated Federal program.

(A) Time-limited exception for refugees and asylees

(i) Medicaid

With respect to the designated Federal program described in paragraph (3)(C), paragraph (1) shall not apply to an alien until 7 years after the date—

(I) an alien is admitted to the United States as a refugee under § 207 of the Immigration nd Nationality Act [8 U.S.C.A. § 1157];

(II) an alien is granted asylum under § 208 of such Act [8 U.S.C.A. § 1158];

(III) an alien's deportation is withheld under § 243 of such Act [8 U.S.C.A. § 1253(h)] (as in effect immediately before the effective date [April 1, 1997] of § 307 of division C of Public Law 104-208) or § 241 (b)(3) of such Act [8 U.S.C.A. § 1251(b)(3)] (as amended by § 305(a) of division C of Public Law 104-208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in § 501(e) of the Refugee Education Assistance Act of 1980); or

(V) an alien admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) until 5 years after the date of such alien's entry into the United States.

(ii) Other designated Federal programs

With respect to the designated Federal programs under paragraph (3) (other than subparagraph (C)), paragraph (1) shall not apply to an alien until 5 years after the date—

(I) an alien is admitted to the United States as a refugee under § 207 of the Immigration and Nationality Act [8 U.S.C.A. § 1157];

(II) an alien is granted asylum under § 208 of such Act [8 U.S.C.A. § 1158];

(III) an alien's deportation is withheld under § 243(h) of such Act [8 U.S.C.A. § 1253(h)] (as in effect immediately before the effective date [April 1, 1997 of § 307 of division C of Public Law 104-208) or § 241 (b)(3) of such Act [8 U.S.C.A. § 1251(b)(3)] (as amended by § 305(a) of division C of Public Law 104-208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in § 501(e) of the Refugee Education Assistance Act of 1980); or

(V) an alien admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) until 5 years after the date of such alien's entry into the United States.

(B) Certain permanent resident aliens

An alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.]; and

(ii)(I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.] or can be credited with such qualifying quarters as provided under § 1645 of this title, and (II) in the case of any

such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under § 1613 of this title) during any such period.

(C) Veteran and active duty exception

An alien who is lawfully residing in any State and is—

(i) a veteran (as defined in §§ 101, 1101, or 1301, or as described in § 107 of Title 38) with a discharge characterized as an honorable discharge and not on account of alienage, and who fulfills the minimum active-duty service requirements of § 5303 A(d) of title 38, United States Code

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of § 1304 of title 38, United States Code.

(D) Transition for those currently receiving benefits

An alien who on August 22, 1996 is lawfully residing in any State and is receiving benefits under such program on August 22, 1996 shall continue to be eligible to receive such benefits until January 1, 1997.

(E) Medicaid exception for certain Indians

With respect to eligibility for benefits for the program defined in paragraph (3)(C) (relating to the medicaid program), § 1611(a) of this title and paragraph (1) shall not apply to any individual described in subsection (a)(2)(G) of this section.

(F) Medicaid exception for aliens receiving SSI

An alien who is receiving benefits under the program defined in subsection (a)(3)(A) of this section (relating to the supplemental security income program) shall be eligible for medical assistance under a State plan under a State plan under title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.) under the same terms and conditions that apply to other recipients of benefits under the program defined in such subsection.

(3) "Designated Federal program" defined

For purposes of this title, the term "designated Federal program" means any of the following:

(A) Temporary assistance for needy families

The program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act [42 U.S.C.A. § 601 et seq.].

(B) Social services block grant

The program of block grants to States for social services under title XX of the Social Security Act [42 U.S.C.A. § 1397 et seq.].

(C) Medicaid

A State plan approved under title XIX of the Social Security Act [42 U.S.C.A. § 1396 et seq.], other than medical assistance described in § 1611(b)(1)(A) of this title.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number: 97 C 4884

CITY OF CHICAGO

v.

SHALALA

JUDGMENT IN A CIVIL CASE

IT IS ORDERED AND ADJUDGED that the government's motions to dismiss (#11-1 and 31-1) are granted, and this case is dismissed with prejudice. The motions for a preliminary injunction (#5-1 and 15-1) are denied as moot as are other pending motions.

Date: 3/31/98

MICHAEL W. DOBBINS
Clerk of Court

/s/ Christopher A. Lavizzo
CHRISTOPHER A. LAVIZZO
Deputy Clerk

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 97 C 4884

CITY OF CHICAGO, *et al.*,
Plaintiffs,

MORRIS ISAAK SINELNIKOV, *et al.*,
Plaintiffs-Intervenors,

VS.

DONNA E. SHALALA, *et al.*,
Defendants.

REPORT OF PROCEEDINGS
BEFORE THE
HONORABLE BLANCHE M. MANNING
Chicago, Illinois
December 15, 1997

* * * *

THE COURT: Not for the certification. It's conceivable that somewhere down the line counsel may raise some other kind of challenge. For the certification, I think you've certainly satisfied all of the 23 requirements. I'm going to rule right now.

I take it there is no objection to the motion for intervention, so I'll grant that motion. With respect to the class certification as set forth in plaintiff's papers, I will also grant that motion. * * *

* * * *

APPENDIX E

STATUTORY PROVISIONS INVOLVED

TITLE 8. ALIENS AND NATIONALITY
CHAPTER 14—RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

§ 1601. Statements of national policy concerning welfare and immigration

The Congress makes the following statements concerning national policy with respect to welfare and immigration:

(1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

(2) It continues to be the immigration policy of the United States that—

(A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and

(B) the availability of public benefits not constitute an incentive for immigration to the United States.

(3) Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.

(4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.

(5) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.

(6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.

(7) With respect to the State authority to make determinations concerning the eligibility of qualified aliens for public benefits in this title, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.

ELIGIBILITY FOR FEDERAL BENEFITS

§ 1611. Aliens who are not qualified aliens ineligible for Federal public benefits

(a) In general.

Notwithstanding any other provision of law and except as provided in subsection (b) of this section, an alien who is not a qualified alien (as defined in section 1641 of this title) is not eligible for any Federal public benefit (as defined in subsection (c)).

(b) Exceptions.

(1) Subsection (a) of this section shall not apply with respect to the following Federal public benefits:

(A) Medical assistance under title XIX of the Social Security Act [42 USCS §§ 1396 et seq.] (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act [42 USCS § 1396b (v)(3)]) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act [42 USCS §§ 601 et seq.], supplemental security income benefits under title XVI of such Act [42 USCA §§ 1381 et seq.], or a State supplementary payment).

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Public health assistance (not including any assistance under title XIX of the Social Security Act [42 USCS §§ 1396 et seq.]) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(D) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(E) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949 [42 USCS §§ 1471 et seq.], or any assistance under section 306C of the Consolidated Farm and Rural Development Act [7 USCS § 1926c], to the extent that the alien is receiving such a benefit on August 22, 1996.

(2) Subsection (a) of this section shall not apply to any benefit payable under title II of the Social Security Act [42 USCS § 401 et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General, to any benefit if nonpayment of such benefit would contravene an international agreement described in section 233 of the Social Security Act [42

USCS § 433], to any benefit if nonpayment would be contrary to section 202(t) of the Social Security Act [42 USCS § 402(t)], or to any benefit payable under title II of the Social Security Act [42 USCS §§ 401 et seq.] to which entitlement is based on an application filed in or before the month in which this Act becomes law.

(3) Subsection (a) of this section shall not apply to any benefit payable under title XVIII of the Social Security Act (relating to the medicare program) [42 USCS §§ 1395 et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General and, with respect to benefits payable under part A of such title [42 USCS §§ 1395c et seq.] who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits.

(4) Subsection (a) shall not apply to any benefit payable under the Railroad Retirement Act of 1974 or the Railroad Unemployment Insurance Act to an alien who is lawfully present in the United States as determined by the Attorney General or to an alien residing outside the United States.

(c) Federal public benefit defined.

(1) Except as provided in paragraph (2), for purposes of this chapter the term "Federal public benefit" means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other

similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 [48 USCS § 1681 nts.] (or a successor provision) is in effect; or

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State.

§ 1612. Limited eligibility of qualified aliens for certain Federal programs

(a) Limited eligibility for specified Federal programs. (1) In general. Notwithstanding any other provision of law and except as provided in paragraph (2), an alien who is a qualified alien (as defined in section 431 [8 USCS § 1641]) is not eligible for any specified Federal program (as defined in paragraph (3)).

(2) Exceptions. (A) Time-limited exception for refugees and asylees. (i) SSI. With respect to the specified Federal program described in paragraph (3)(A), paragraph (1) shall not apply to an alien until 7 years after the date—

(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 USCS § 1157];

(II) an alien is granted asylum under section 208 of such Act [8 USCS § 1157];

(III) an alien's deportation is withheld under section 243(h) of such Act [8 USCS § 1253(h)] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 USCS § 1251(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 [8 USCS § 1522 nt.]); or

(V) an alien is admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations Export Financing, and Related Programs Appropriations Act, 1988 [8 USCS § 1101 nt.] (as contained in section 101(e) of Public Law 100-202 and amended by the 9th proviso under migration and refugee assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended).

(ii) Food stamps. With respect to the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to an alien until 5 years after the date—

(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 USCS § 1157];

(II) an alien is granted asylum under section 208 of such Act [8 USCS § 1158];

(III) an alien's deportation is withheld under section 243(h) of such Act [8 USCS § 1253(h)] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 USCS §1251(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section

501(e) of the Refugee Education Assistance Act of 1980 [8 USCS § 1522 nt.]); or

(V) an alien is admitted to the United States as an Amerasian immigrant as described in clause (i)(V).

(B) Certain permanent resident aliens. Paragraph (1) shall not apply to an alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 USCS §§ 401 et seq.] or can be credited with such qualifying quarters as provided under section 435 [8 USCS § 1645], and (II) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 403 [8 USCS § 1613]) during any such period.

(C) Veteran and active duty exception. Paragraph (1) shall not apply to an alien who is lawfully residing in any State and is—

(i) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38, United States Code,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38, United States Code.

(D) Transition for aliens currently receiving benefits. (i) SSI.

(I) In general. With respect to the specified Federal program described in paragraph (3)(A), during the period beginning on the date of the enactment of this Act [enacted Aug. 22, 1996] and ending on September 30, 1998, the Commissioner of Social Security shall redetermine the eligibility of any individual who is receiving benefits under such program as of the date of the enactment of this Act [enacted Aug. 22 1996] and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.

(II) Redetermination criteria. With respect to any redetermination under subclause (I), the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under such program.

(III) Grandfather provision. The provisions of this subsection and the redetermination under subclause (I), shall only ap-

ply with respect to the benefits of an individual described in subclause (I) for months beginning on or after September 30, 1998.

(IV) Notice. Not later than March 31, 1997, the Commissioner of Social Security shall notify an individual described in subclause (I) of the provisions of this clause.

(ii) Food stamps.

(I) In general. With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997, to an alien who received benefits under such program on the date of enactment of this Act [enacted Aug. 22, 1996], unless such alien is determined to be ineligible to receive such benefits under the Food Stamp Act of 1977. The State agency shall recertify the eligibility of all such aliens during the period beginning April 1, 1997, and ending August 22, 1997.

(II) Recertification criteria. With respect to any recertification under subclause (I), the State agency shall apply the eligibility criteria for applicants for benefits under such program.

(III) Grandfather provision. The provisions of this subsection and the recertification under subclause (I) shall only apply with respect to the eligibility of an alien for a program for months beginning on or

after the date of recertification, if on the date of enactment of this Act [enacted Aug. 22, 1996] the alien is lawfully residing in any State and is receiving benefits under such program on such date of enactment.

(E) Aliens receiving SSI on August 22, 1996. With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to an alien who is lawfully residing in the United States and who was receiving such benefits on August 22, 1996.

(F) Disabled aliens lawfully residing in the United States on August 22, 1996. With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the suppleemntal security income program), paragraph (1) shall not apply to an alien who—

(i) was lawfully residing in the United States on August 22, 1996; and

(ii) is blind or disabled, as defined in section 1614(a)(2) or 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)).

(G) SSI exception for certain Indians. With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), section 401(a) [8 USCS § 1611(a)] and paragraph (1) shall not apply to any individual—

(i) who is an American Indian born in Canada to whom the provisions of section 289 of the

Immigration and Nationality Act (8 U.S.C. 1359) apply; or

(ii) who is a member of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))).

(H) SSI exception for certain recipients on the basis of very old applications. With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to any individual—

(i) who is receiving benefits under such program for months after July 1996 on the basis of an application filed before January 1, 1979; and

(ii) with respect to whom the Commissioner of Social Security lacks clear and convincing evidence that such individual is an alien ineligible for such benefits as a result of the application of this section.

(3) Specified Federal program defined. For purposes of this title, the term "specified Federal program" means any of the following:

(A) SSI. The supplemental security income program under title XVI of the Social Security Act [42 USCS §§ 1381 et seq.], including supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [42 USCS § 1382e(a)] and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66 [42 USCS § 1382 note].

(B) Food stamps. The food stamp program as defined in section 3(h) of the Food Stamp Act of 1977 [7 USCS § 2012(h)].

(b) Limited eligibility for designated Federal programs. (1) In general. Notwithstanding any other provision of law and except as provided in section 403 [8 USCS § 1613] and paragraph (2), a State is authorized to determine the eligibility of an alien who is a qualified alien (as defined in section 431 [8 USCS § 1641]) for any designated Federal program (as defined in paragraph (3)).

(2) Exceptions. Qualified aliens under this paragraph shall be eligible for any designated Federal program.

(A) Time-limited exception for refugees and asylees. (i) Medicaid. With respect to the designated Federal program described in paragraph (3)(C), paragraph (1) shall not apply to an alien until 7 years after the date—

(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 USCS § 1157];

(II) an alien is granted asylum under section 208 of such act [8 USCS § 1158];

(III) an alien's deportation is withheld under section 243(h) of such Act [8 USCS § 1253(h)] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 USCS § 1251(b)(3)] (as amended by section

305(a) of division C of Public Law 104-208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 [8 USCS § 1522 nt.]); or

(V) an alien admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) until 5 years after the date of such alien's entry into the United States.

(ii) Other designated Federal programs. With respect to the designated Federal programs under paragraph (3) (other than subparagraph (C)), paragraph (1) shall not apply to an alien until 5 years after the date—

(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 USCS § 1157];

(II) an alien is granted asylum under section 208 of such Act [8 USCS § 1158];

(III) an alien's deportation is withheld under section 243(h) of such Act [8 USCS § 1253(h)] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 USCS § 1251(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 [8 USCS § 1522 nt.]); or

(V) an alien admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) until 5 years after the date of such alien's entry into the United States.

(B) Certain permanent resident aliens. An alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 USCS §§ 401 et seq.] or can be credited with such qualifying quarters as provided under section 435 [8 USCS § 1645], and (II) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 403 [8 USCS § 1613]) during any such period.

(C) Veteran and active duty exception. An alien who is lawfully residing in any State and is—

(i) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the mini-

mum active-duty service requirements of section 5303A(d) of title 38, United States Code,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38, United States Code.

(D) Transition for those currently receiving benefits. An alien who on the date of the enactment of this Act [enacted Aug. 22, 1996] is lawfully residing in any State and is receiving benefits under such program on the date of the enactment of this Act [enacted Aug. 22, 1996] shall continue to be eligible to receive such benefits until January 1, 1997.

(E) Medicaid exception for certain Indians. With respect to eligibility for benefits for the program defined in paragraph (3)(C) (relating to the medicaid program), section 401(a) [8 USCS § 1611(a)] and paragraph (1) shall not apply to any individual described in subsection (a)(2)(G).

(F) Medicaid exception for aliens receiving SSI. An alien who is receiving benefits under the program defined in subsection (a)(3)(A) (relating to the supplemental security income program) shall be eligible for medical assistance under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) under the same terms and conditions that apply to other recipients of benefits under the program defined in such subsection.

(3) Designated Federal program defined. For purposes of this title, the term "designated Federal program" means any of the following:

(A) Temporary assistance for needy families. The program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act [42 USCS §§ 601 et seq.].

(B) Social services block grant. The program of block grants to States for social services under title XX of the Social Security Act [42 USCS §§ 1397 et seq.].

(C) Medicaid. A State plan approved under title XIX of the Social Security Act [42 USCS §§ 1396 et seq.], other than medical assistance described in section 401(b)(1)(A) [8 USCS § 1611(b)(1)(A)].

§ 1613. Five-year limited eligibility of qualified aliens for Federal means-tested public benefit

(a) In general.

Notwithstanding any other provision of law and except as provided in subsections (b), (c), and (d) of this section, an alien who is a qualified alien (as defined in section 1641 of this title) and who enters the United States on or after August 22, 1996 is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the alien's entry into the United States with a status within the meaning of the term "qualified alien".

(b) Exceptions.

The limitation under subsection (a) of this section shall not apply to the following aliens:

(1) Exception for refugees and asylees

(A) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C.A. § 1157].

(B) An alien who is granted asylum under section 208 of such Act [8 U.S.C.A. § 1158].

(C) An alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C.A. § 1230(h)] (as in effect immediately before the effective date [April 1, 1997] of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C.A. § 1251(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208).

(D) An alien who is a Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(E) An alien admitted to the United States as an Amerasian immigrant as described in section 1612 (a)(2)(A)(i)(V) of this title.

(2) Veteran and active duty exception

An alien who is lawfully residing in any State and is—

(A) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of Title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38, United States Code.

(B) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(C) the spouse or unmarried dependent child of an individual described in subparagraph (A) or (B) or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38, United States Code.

(c) Application of term Federal means-tested public benefit.

(1) The limitation under subsection (a) of this section shall not apply to assistance or benefits under paragraph (2).

(2) Assistance and benefits under this paragraph are as follows:

(A) Medical assistance described in section 1611 (b)(1)(A) of this title.

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Assistance or benefits under the National School Lunch Act [42 U.S.C.A. § 1751 et seq.].

(D) Assistance or benefits under the Child Nutrition Act of 1966 [42 U.S.C.A. § 1771 et seq.].

(E) Public health assistance (not including any assistance under title XIX of the Social Security Act [42 U.S.C.A. § 1396 et seq.]) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(F) Payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act [42 U.S.C.A. § 620 et seq. and § 670 et seq.] for a parent or a child who would, in the absence of subsection (a) of this section, be eligible to have such payments made on the child's behalf under such part, but only if the foster or adoptive parent (or parents) of such child is a qualified alien (as defined in section 1641 of this title).

(G) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(H) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965 [20 U.S.C.A. § 1070 et seq., § 1101 et seq., § 1134 et seq., and § 1135 et seq.], and titles III, VII, and VIII of the Public Health Service Act [42 U.S.C.A. § 241 et seq., § 292 et seq., and § 296 et seq.].

(I) Means-tested programs under the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.].

(J) Benefits under the Head Start Act [42 U.S.C.A. § 9831 et seq.].

(K) Benefits under the Job Training Partnership Act.

(d) SSI and Medicaid benefits for certain Indians.

Notwithstanding any other provision of law, the limitations under section 1611(a) of this title and subsection (a) of this section shall not apply to an individual described in section 1612(a)(2)(G) of this title, but only with respect to the programs specified in subsections (a)(3)(A) and (b)(3)(C) of section 1612 of this title.

§ 1631. Federal attribution of sponsor's income and resources to alien

(a) In general.

Notwithstanding any other provision of law, in determining the eligibility and the amount of benefits of an alien for any Federal means-tested public benefits program (as provided under section 1613 of this title), the income and resources of the alien shall be deemed to include the following:

(1) The income and resources of any person who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act (as added by section 423) [8 U.S.C.A. § 1183a] and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 on behalf of such alien.

(2) The income and resources of the spouse (if any) of the person.

(b) Duration of attribution period.

Subsection (a) of this section shall apply with respect to an alien until such time as the alien—

(1) achieves United States citizenship through naturalization pursuant to chapter 2 of title III of the Immigration and Nationality Act [8 U.S.C.A. §§ 1421 et seq.]; or

(2)(A) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.] or can be credited with such qualifying quarters as provided under section 1645 of this title, and (B) in the case of any such qualifying quarter creditable for any period be-

ginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(c) Review of income and resources of alien upon reapplication.

Whenever an alien is required to reapply for benefits under any Federal means-tested public benefits program, the applicable agency shall review the income and resources attributed to the alien under subsection (a) of this section.

(d) Application.

(1) If on August 22, 1996, a Federal means-tested public benefits program attributes a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning on the day after August 22, 1996.

(2) If on August 22, 1996, a Federal means-tested public benefits program does not attribute a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning 180 days after August 22, 1996.

(e) Indigence exception.

(1) In general

For an alien for whom an affidavit of support under section 213A of the Immigration and Nationality Act [8 U.S.C.A. § 1183a] has been executed, if a determination described in paragraph (2) is

made, the amount of income and resources of the sponsor or the sponsor's spouse which shall be attributed to the sponsored alien shall not exceed the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date.

(2) Determination described

A determination described in this paragraph is a determination by an agency that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the alien's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor. The agency shall notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved.

(f) Special rule for battered spouse and child.

(1) In general

Subject to paragraph (2) and notwithstanding any other provision of this section, subsection (a) of this section shall not apply to benefits—

(A) during a 12 month period if the alien demonstrates that (i) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to or acquiesced to such battery or cruelty, (ii) the alien's child has been battered or subjected to extreme cruelty in the United States by the spouse or parent of

the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented or acquiesced to and the alien did not actively participate in such battery or cruelty, or (iii) the alien is a child whose parent (who resides in the same household as the alien child) has been battered or subjected to extreme cruelty in the United States by that parent's spouse, or by a member of the spouse's family residing in the same household as the parent and the spouse consented to, or acquiesced in, such battery or cruelty, and the battery or cruelty described in clause (i), (ii), or (iii) (in the opinion of the agency providing such public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the public benefits applied for; and

(B) after a 12 month period (regarding the batterer's income and resources only) if the alien demonstrates that such battery or cruelty under subparagraph (A) has been recognized in an order of a judge or administrative law judge or a prior determination of the Immigration and Naturalization Service, and that such battery or cruelty (in the opinion of the agency providing such public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the benefits.

(2) Limitation

The exception under paragraph (1) shall not apply to benefits for an alien during any period in which

the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual who was subject to such battery or cruelty.

AGRICULTURAL RESEARCH EXTENSION AND EDUCATION REFORM ACT OF 1998, P.L. 105-185

SEC. 504. FOOD STAMP ELIGIBILITY FOR CER-CERTAIN DISABLED ALIENS.

Section 402(a)(2)(F) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(F)) is amended—

(1) by striking "program defined in paragraph (3)(A) (relating to the supplemental security income program)" and inserting "specified Federal programs described in paragraph (3)"; and

(2) in clause (ii)—

(A) by inserting "(I) in the case of the specified Federal program described in paragraph (3)(A)," after "(ii)";

(B) by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

*579 "(II) in the case of the specified Federal program described in paragraph (3)(B), is receiving benefits or assistance for blindness or disability (within the meaning of section 3(r) of the Food Stamp Act of 1977 (7 U.S.C. 2012(r)))."

SEC. 506. FOOD STAMP ELIGIBILITY FOR CER-TAIN ELDERLY INDIVIDUALS.

Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)) is amended by adding at the end the following:

"(I) FOOD STAMP EXCEPTION FOR CERTAIN ELDERLY INDIVIDUALS.—With respect to eligibility

for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any individual who on August 22, 1996—

"(i) was lawfully residing in the United States; and

"(ii) was 65 years of age or older.".

SEC. 507. FOOD STAMP ELIGIBILITY FOR CERTAIN CHILDREN.

Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)) (as amended by section 506) is amended by adding at the end the following:

"(J) FOOD STAMP EXCEPTION FOR CERTAIN CHILDREN.—With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any individual who—

"(i) was lawfully residing in the United States on August 22, 1996; and

"(ii) is under 18 years of age.".

(2)

No. 99-898

Supreme Court, U.S.
FILED
DEC 22 1999

IN THE
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v.

DONNA E. SHALALA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNTIED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF AMICUS CURIAE CITY OF NEW YORK IN SUPPORT OF THE PETITION

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December 22, 1999.

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BRIEF OF AMICUS CURIAE CITY OF NEW YORK IN SUPPORT OF THE PETITION

INTEREST OF AMICUS

The City of New York ("City") submits this brief as amicus curiae in support of the petition for a writ of certiorari filed by the City of Chicago. As reviewed herein, the Welfare Reform Act has direct and profound adverse

social and fiscal impacts on the City that it should not be required to endure without review by this Court of the significant questions raised by the petition regarding the constitutionality of the Act.

All persons who, but for the Act, would be eligible for Supplemental Security Income ("SSI") are indigent. In the absence of SSI, these needy individuals may be eligible for public assistance benefits funded, in part, by the City, such as Safety Net (formerly, Home Relief). The fiscal impact of the alienage provisions of the Welfare Reform Act on the City are thus significant. At present, approximately 2200 legal aliens who arrived in this country subsequent to August 22, 1996, are receiving Safety Net benefits in the City. The total annual cost of such benefits is $8.4 million. Because the City contributes 50% of this cost, and nothing to SSI, this additional expenditure is a significant financial and administrative burden.

Moreover, SSI benefits are higher than the Safety Net benefits provided in New York State, and the resulting gap in benefit levels will leave elderly, blind or disabled recipients further below the poverty level. Also, due to their age or infirmity, some legal aliens who would otherwise be eligible for SSI may not undertake the application process for Safety Net. The absence of SSI benefits will thus cause individuals to experience increased poverty and dependence. This, in turn, will likely result in a variety of unquantifiable social costs to the City, including a lack of housing, more demand for emergency food programs and increased public health and safety costs.[1]

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[1] *See Abreu v. Callahan*, 971 F Supp 799, 805 (SDNY 1997).

The Act has also directly affected the City's budget in other ways. For example, in 1997, the City's concern for, and commitment to, all of its residents, regardless of immigration status, prompted the establishment of a Mayoral Initiative known as Citizenship New York City, the purpose of which is to address the pressing needs of the vulnerable population specifically targeted by the Act. The Initiative works with, and advocates on behalf of, noncitizen lawful permanent residents as they navigate through the intricacies of the naturalization process. Once citizenship is obtained, the person is eligible for, as needed, the higher Federal benefits, SSI and food stamps, thus eliminating dependence on City-funded programs.

The City's allocation of scarce resources reflects difficult choices. The Initiative's start-up costs of $1.5 million and its annual budget of $4.868 million is certainly money that should be used in other parts of the City's budget. The City, however, considers the Initiative to be a necessary antidote to the deleterious and continuing impacts of the Act on both the affected class of permanent residents and on the City and its treasury.

Historically, the City has been the "golden door" to "the homeless, tempest-tossed ... masses yearning to breathe free." Emma Lazarus, *The New Colossus*. Federal, state and local welfare systems have traditionally combined to provide these new, legal residents with minimal levels of comfort and to help those who are able to become productive members of society. However, as the petition makes clear, the Welfare Reform Act is really about shifting the financial and social burdens of immigration to state and local governments, a shift that, in light of its large immigrant population, is particularly and unfairly onerous to the City.

Echoing the petition, the City respectfully submits that the Federal government should not be permitted to escape its fair share of the economic burdens that result when it admits individuals to lawful permanent residence in this country. The severe impacts of the Welfare Reform Act on the fiscal and social integrity of the City of New York are a direct result of the Act's violation of the equal protection guarantee of the Fifth Amendment.

CONCLUSION

THE CITY OF CHICAGO'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT SHOULD BE GRANTED.

Dated: New York, New York
December 22, 1999

Respectfully submitted,

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Supreme Court, U.S.
FILED
DEC 23 1999
CLERK

No. 99-898

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF *AMICI CURIAE* OF THE CENTER FOR LAW AND SOCIAL POLICY, THE FOOD RESEARCH AND ACTION CENTER, THE NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, AND THE CHILDREN'S DEFENSE FUND IN SUPPORT OF PETITIONERS

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December 23, 1999

WILSON-EPES PRINTING CO., INC. - (202) 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether Congress may, consistent with the Fifth Amendment's requirement of equal protection under law, disqualify noncitizens lawfully residing in the United States from receiving federally funded welfare benefits that noncitizens help to fund through their taxes on the same basis as citizens.

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IN THE

Supreme Court of the United States

No. 99-898

CITY OF CHICAGO, *et al.*,
Petitioners,

v.

DONNA E. SHALALA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF *AMICI CURIAE* OF THE CENTER FOR LAW AND SOCIAL POLICY, THE FOOD RESEARCH AND ACTION CENTER, THE NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, AND THE CHILDREN'S DEFENSE FUND IN SUPPORT OF PETITIONERS

INTEREST OF *AMICI CURIAE* [1]

The Center for Law and Social Policy (CLASP) is a national public policy and law organization founded in 1968. CLASP undertakes policy advocacy and research concerning family poverty and legal assistance to the poor,

[1] Pursuant to Rule 37.3 of the Rules of this Court, the parties have consented to the filing of this brief. The parties' letters of consent have been filed with the Clerk of this Court. No counsel for any party has authored this brief in whole or in part. No monetary contributions to the preparation or submission of this brief have been made by any person or entity other than *amici curiae* and their counsel.

as well as technical assistance, training, and publication in those areas.

The Food Research and Action Center (FRAC) is a research, public education, training, technical assistance, law, and public policy center whose mission is to end hunger in the United States. FRAC focuses on raising family incomes and strengthening public nutrition assistance programs in order to reduce hunger and undernutrition.

The National Law Center on Homelessness and Poverty is a not-for-profit organization based in Washington, D.C., established to address issues related to homelessness and poverty at the national level. Poor and homeless people are frequently without effective political voice or power. The Center works to protect the constitutional and statutory rights of homeless families and individuals and to develop constructive policies to help homeless persons out of poverty and into self-sufficiency. Recently, the impact of welfare reform has been a focus of the Center's work.

The Children's Defense Fund is a private, nonprofit organization founded in 1973. It provides a voice for children who cannot vote, lobby, or speak for themselves, paying particular attention to the needs of poor and minority children and to the needs of children with disabilities.

The decision below (Pet. App. 1a-21a) is the most recent in a string of lower court decisions rejecting constitutional challenges to provisions of federal welfare reform legislation that discriminate against a large and growing class of low-income persons on the sole basis that those individuals are not citizens. See Pet. 16 (citing cases). These statutory provisions have already resulted in the termination of Food Stamps, Supplemental Security Income payments, Medicaid coverage, and Temporary

Assistance to Needy Families payments to many hundreds of thousands of permanent resident aliens who live in or near poverty, with dramatic consequences for those immigrants' health and well-being. The impact of these statutory provisions will increase dramatically over the next several years, as immigrants who have come to the United States since the effective date of the statute (and who are subject to particularly draconian restrictions) continue to increase in numbers. *Amici* respectfully submit this brief in order to bring to the Court's attention facts and empirical data concerning the far-reaching effects of the challenged statutory provisions that may be of assistance to the Court in considering the petition for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Reform Act") sharply restricted noncitizens' participation in federal benefit programs. Most noncitizens were prohibited outright from participating in the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*, a federally funded program to assist low-income households purchase food, and the Supplemental Security Income Program (SSI), 42 U.S.C. § 1381 *et seq.*, a federally funded program providing cash support for low income persons who are elderly or disabled. 8 U.S.C. § 1612. The Welfare Reform Act also prohibited most immigrants entering the United States after August 22, 1996, from participating in other "Federal means-tested public benefit" programs for five years after their date of entry into the United States. 8 U.S.C. § 1613. As a result, many noncitizens are also ineligible to receive benefits under the Medicaid program, 42 U.S.C. § 1396 *et seq.*, a federal program established to reimburse states for the cost of providing medical care to needy persons, and

benefits under the Temporary Assistance for Needy Families program (TANF), 42 U.S.C. § 601 *et seq.*, a federally funded, temporary cash support program for poor families. Subsequent legislation restored Food Stamp benefits to some income-eligible immigrants who were legal residents as of August 22, 1996, Pub. L. No. 105-185, §§ 504, 506, 507, 112 Stat. 578-79 (1998), and to SSI recipients who were legal residents and who were already receiving benefits as of that date, or who were legal residents as of that date and who subsequently become blind or disabled. Pub. L. No. 155-33, tit. VII(a), 111 Stat. 216-17 (1997).

1. The provisions of the Welfare Reform Act discriminating against noncitizens have already had a profound effect on the health and welfare of permanent resident aliens. The impact of those statutory provisions is apparent both from government data and from other empirical research.

The Department of Agriculture has estimated that approximately 935,000 permanent resident aliens who were otherwise eligible for Food Stamps lost their eligibility for Food Stamps in fiscal 1997 as a direct result of the Welfare Reform Act. M. Fix and W. Zimmerman, *The Legacies of Welfare Reform's Immigrant Restrictions*, 75 Interpreter Releases 1577, 1580 (1998) [hereinafter *Legacies*]. The most recent estimates indicate that the partial restoration of Food Stamp eligibility to certain legal immigrants in fiscal 1999 resulted in approximately 225,000 permanent resident aliens regaining eligibility for federally funded Food Stamps. See The White House, *President Clinton and Vice President Gore's FY 2000 Budget: Meeting the Needs of the Nation's Long-Term Challenges, Issue Paper, "Restoring Benefits to Vulnerable Groups of Immigrants"* (February 1, 1999). The Department of Agriculture has estimated that in fiscal 1999

there were 570,000 income-eligible permanent resident aliens who were ineligible for Food Stamps solely because of their status as noncitizens. General Accounting Office, *Welfare Reform: Many States Continue Some Federal or State Benefits for Immigrants* 12 (July 1998) [hereinafter *Welfare Reform*].[2]

For many of the affected households, Food Stamps were an essential lifeline enabling family members to obtain the food necessary to lead an active, productive life. A detailed study of the impact of Food Stamp cuts in two cities with high immigrant populations, Los Angeles and San Francisco, found that immigrant households whose Food Stamps were cut experienced dramatically more food insecurity and hunger than a control group of immigrant households who continued to receive Food Stamps. California Food Security Monitoring Project and California Food Policy Advocates, *Impact of Legal Immigrant Food Stamp Cuts in Los Angeles and San Francisco: Preliminary Summary* (May 1998).[3] Even more disturb-

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[2] The total number of permanent resident aliens who were income-eligible for Food Stamps in fiscal 1999 was 820,000 (including 250,000 whose statutory eligibility was restored and 570,000 who remained ineligible). This total is less than the 940,000 figure for fiscal 1997 because of a general decline in the number of Food Stamp recipients and an increase in the number of legal immigrants who have become naturalized citizens. *Welfare Reform* at 12.

[3] Researchers define "food insecurity" as a condition of "limited or uncertain availability of nutritionally adequate and safe foods." United States Department of Agriculture, Food and Consumer Service, *Household Food Security in the United States in 1995* iii (1997) [hereinafter *Household Food Security*]. "Hunger" is defined as "the uneasy or painful sensation caused by a lack of food." *Id.* Households described as "food insecure with moderate hunger" are households in which "[f]ood intake for adults has been reduced to an extent that it implies that adults have repeatedly experienced the physicial sensation of hunger." *Id.* at vi. Households described

ing, the cuts led to a marked increase in severe hunger among children. *Id.* at 7-8. The study also showed that while some families did not suffer from food insecurity or hunger immediately after the cuts, they began to suffer from increased food insecurity and hunger over time. *Id.* at 7. Six months after the Welfare Reform Act's Food Stamp cuts had taken effect, half of the families whose benefits were cut suffered from household food insecurity with moderate or severe hunger. *Id.* at 8. This was *four times* higher than the rate among the United States low-income population as a whole. *Id.*[4] This pattern is consistent with the results of other research documenting the progression of food insecurity—beginning with anxiety about insufficient access to food, followed by changes in the quality or variety of food intake, leading to reduced food intake by adults, and ultimately resulting in hunger among all family members, including children. *Id.*; compare C. Olson, *et al., Understanding the Measurement of Hunger and Food Insecurity in the Elderly* 22-29 (Inst. for Research on Poverty, University of Wisconsin, May 1996).

Other research on overall levels of food insecurity and hunger among permanent resident aliens with low incomes has produced findings that are equally alarming. A study of Latino and Asian permanent resident aliens using public health facilities in California, Texas, and Illinois found that 80% of the households surveyed suffered from food insecurity or hunger. Physicians for Hu-

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as "'food insecure with severe hunger" are households with "more extensive reductions in food intake" among adults and (in the case of households with children) households "that have reduced the children's food intake to an extent that it implies that the children have experienced the physical sensation of hunger." *Id.*

[4] These figures represent the study's findings in Los Angeles. Similar effects were found in San Francisco.

man Rights, *Hungry at Home: Food Insecurity and Hunger Among Legal Immigrants in the United States* 1 (September 1999). More than 40% of the households surveyed suffered from moderate or severe hunger. *Id.*

Food insecurity and hunger are not merely statistical constructs. Empirical research shows that children who live in hungry households are much more likely than other children to suffer from unwanted weight loss, dizziness, diarrhea (staph), asthma, anemia, frequent colds, frequent headaches, and ear and other infections. Food Research and Action Center, *Community Childhood Hunger Identification Project: A Survey of Childhood Hunger in the United States* 22 (July 1995) [hereinafter *Childhood Hunger*]. Children who live in hungry households are also disproportionately likely to suffer from fatigue, irritability, and inability to concentrate. *Id.*[5] Another recent study shows that, controlling for other factors, children suffering from food insecurity are more likely to have behavioral and performance problems in school and to exhibit disabilities affecting performance in school (such as learning and perceptual disabilities and speech impairments). Panel Study of Income Dynamics, *Some Recent Findings from the PSID: Children's Food Security*, PSID Newsletter (April 1998).

The consequences of unremedied food insecurity and hunger are not confined to children. Pregnant women who suffer from food insecurity and hunger are likely to deliver less healthy babies. See Institute of Medicine, Committee on Scientific Evaluation of WIC Nutrition Risk Criteria, *WIC Nutrition Risk Criteria: A Scientific Assessment* 44 (1996). Elderly persons who are hungry

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[5] These disparities between children from hungry households and other children hold even when comparisons are limited to the same income level. *Childhood Hunger* at 22.

or food insecure may suffer from weakness, loss of muscle mass, poor healing of wounds, impaired organ functions, infections, and increased susceptibility to degenerative diseases. See K. Cope, *Malnutrition in the Elderly: A National Crisis* 3-4, 12-15 (U.S. Admin. on Aging, Region X, 1996). They may also find it difficult to follow medically recommended diets for conditions like high blood pressure or to maintain regular eating patterns necessary for proper care of diabetes. C. Olson, *Food Insecurity and Hunger: Poverty Policy for the 1990s and Beyond*, 18 Focus 61, 63 (Fall/Winter 1996-97). Hungry adults of any age are more likely to suffer from malnutrition. *Household Food Security* at iii.[6]

In short, policies that single out permanent resident aliens as a group unworthy of federal assistance have increased the level of food insecurity and hunger among permanent resident aliens living at or near the poverty level. Such policies deprive hundreds of thousands of vulnerable, disadvantaged members of our society of access to food that is necessary for them to lead healthy, productive lives.

The data available for other programs affected by the Welfare Reform Act are less extensive, but generally follow a similar pattern. With respect to SSI, approximately 785,000 noncitizens were receiving benefits in 1995, the year before the cutoff. T. Parrott, *et al.*, *Noncitizens and the Supplemental Security Income Program*, 61 Social Security Bulletin 3, 17 (1998) [hereinafter

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[6] Reduced resources may also force families and individuals to choose among necessities. Faced with the choice, many will forgo housing or medical care to pay for food. *See generally Food for Thought: Cutbacks in the Food Stamp Program Are Proving Hazardous to the Nation's Health*, Scientific American 23, 24 (August 1998); J. Blau, *The Visible Poor: Homelessness in the United States* 57-58 (1992).

Noncitizens and SSI]. This includes benefits for low-income elderly people ("SSI-Aged benefits") and benefits for the blind and totally disabled ("SSI-Disabled benefits"). The Social Security Administration prepared to terminate benefits for about 580,000 legal immigrants before the 1997 amendment preserving benefits for those who were already receiving benefits prior to August 22, 1996. *Welfare Reform* at 10.

Historically, many noncitizen SSI-Aged benefit recipients have been elderly immigrants without sufficient work history to receive Social Security benefits and with no other source of cash income. *Noncitizens and SSI* at 20-23. Although benefits for persons who were receiving SSI-Aged benefits on August 22, 1996 will continue, the Welfare Reform Act makes SSI-Aged benefits unavailable to permanent resident aliens who were already present in the United States on August 22, 1996, but who reach age 65 after that date. See 8 U.S.C. § 1612(a)(2)(E).

An average of 64,000 noncitizens applied for SSI-Aged benefits each year between 1990 and 1995. *Noncitizens and SSI* at 17. There is no reason to assume that the demographic and economic factors that have led needy low-income noncitizens to apply for SSI upon reaching 65 have dissipated. In all likelihood, significant numbers of permanent resident aliens who reach age 65 after the effective date of the Welfare Reform Act will be subsisting below the poverty level, will be unable to work, and will lack any other source of cash income. The impact of the Welfare Reform Act on such permanent resident aliens is likely to be catastrophic.

SSI-Disabled benefits are available to legal permanent residents admitted before August 22, 1996, regardless of when those individuals become disabled. See 8 U.S.C. § 1612(a)(2)(F). However, resident aliens admitted to

the United States after that date are ineligible for SSI-Disabled benefits. See *id.* Between 1990 and 1995, new noncitizen applications for SSI-Disabled benefits averaged 79,000 per year. *Noncitizens and SSI* at 17. There is no reason to believe that poor noncitizens will cease to become blind or totally disabled or that noncitizens who live in poverty and who become blind or totally disabled will not need government assistance.

With respect to Medicaid, approximately 4.6% of all Medicaid enrollees prior to the enactment of the Welfare Reform Act were legal permanent residents. L. Ku and B. Kessler, *The Number and Cost of Immigrants on Medicaid: National and State Estimates* iii (Table ES-2) (Urban Inst., Dec. 16, 1997). This amounted to approximately 1,472,000 people. *Id.* Although legal permanent residents who entered the United States before August 22, 1996 may continue to receive Medicaid benefits if their state of residence elects to provide such benefits, see 8 U.S.C. § 1612(b)(2)(D), legal permanent residents entering the United States after that date are ineligible for Medicaid benefits for at least five years after entry. 8 U.S.C. § 1612(a).[7]

The effects of being denied access to Medicaid coverage are profound. Many low-income immigrants lack access to employer-provided or other private health insurance. Persons with neither Medicaid nor private insurance coverage are far less likely to obtain regular, nonemergency medical services, both because of their lack of resources to pay for such services and because such individuals simply lack a regular health care provider. See American

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[7] After five years, eligibility turns on whether the immigrant is sponsored (in which case his sponsor's income is generally deemed to be available to him, thus effectively precluding eligibility in nearly all cases, until naturalization) and the immigrant's state of residence. *See* 8 U.S.C. § 1631(a).

Academy of Pediatrics, *Policy Statement: Health Care for Children of Immigrant Families* 2-4 (July 1997) [hereinafter *Policy Statement*]; J. Currie, *Medicaid Use by Children of Immigrants*, 18 Focus 54, 55 (Fall/Winter 1996-97). The results of reduced access to medical care are serious for immigrants, their families, and society as a whole. See generally Committee on Health and Adjustment of Immigrant Children and Families, *et al.*, *From Generation to Generation: The Health and Well-Being of Children in Immigrant Families* 136-52 (D. Hernandez and E. Charney, eds., 1998). Among other things, lack of access to regular medical care reduces the effectiveness of emergency medical services even where such services remain available and reduces the likelihood of detecting and treating infectious diseases. *Policy Statement* at 2-3. In addition, restrictions on access to Medicaid reduce access to prenatal care for pregnant women, with potentially disastrous consequences for mothers and their children. *Id.* Denying Medicaid to elderly noncitizens will deprive the weakest and poorest of them of the only source of support they have for long-term care in their old age. See R. Friedland & V. Pankaj, *Welfare Reform and Elderly Legal Immigrants* 15 (National Academy on Aging, July 1997) [hereinafter *Elderly Legal Immigrants*].

2. The impact of the Welfare Reform Act's treatment of permanent resident aliens is increasing every year. The Welfare Reform Act and certain subsequent modifications treat immigrants who were legal permanent residents on or before August 22, 1996 differently from those who are admitted after that date.[8] Over time, as persons who en-

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[8] For instance, the Act's denial of SSI benefits does not apply to legal aliens who were already receiving SSI benefits as of August 22, 1996 or who were lawfully residing in the U.S. as of August 22, 1996 and subsequently become disabled. *See* 8 U.S.C. § 1612(a)(2)(E)-(F). Similarly, legal aliens who, as of August 22, 1996, were elderly or disabled and who were lawfully residing in

tered the United States as legal permanent residents prior to that date naturalize, emigrate, or die, they will make up a decreasing percentage of all legal permanent residents. Conversely, post-Welfare Reform Act immigrants will make up an ever-increasing percentage of legal permanent residents, as well as an increasing percentage of the population generally and the low-income population in particular. Thus, over time, the Welfare Reform Act's restrictions will inevitably affect a larger and larger number of needy permanent resident aliens. See, *e.g.*, S. Wallace, *Welfare Reform Could Add 25,000 Uninsured L.A. County Residents Per Year* 2 (UCLA Center for Health Policy Research, August 1997).

In 1998, the United States admitted 660,000 legal permanent residents (including new entries and adjustments of status). Immigration and Naturalization Service, Office of Policy and Planning, Statistics Branch, *Legal Immigration: Fiscal Year 1998* 2 (May 1999). This figure is lower than in other recent years, and the Immigration and Naturalization Service (INS) estimates that admissions of legal permanent residents might have been up to 140,000 higher if the INS were current in processing the backlog of applications for adjustment of status. *Id.* The Bureau of the Census projects legal immigration (a category that approximates persons admitted to permanent resident alien status and that excludes refugees and undocumented persons) will be between a low estimate of 430,000 per year and a high estimate of 940,000 per year, with 685,000 per year serving as the middle and most likely projection. United States Department of Commerce, Economic and Statistics Administration, Bureau of the Census, *Current Population Reports: Population*

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the U.S. are exempted from the changes denying Food Stamps to aliens entering the country after that date. *See* 8 U.S.C. § 1612 (a)(2)(F), (I).

Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1995 to 2050 28 (February 1996). Under any of these projections, the number of permanent residents who have been admitted since August 22, 1996 will accumulate rapidly in the coming years.

3. The effects of the Welfare Reform Act's provisions concerning permanent resident aliens are not limited to those whose eligibility for benefits is directly affected by the Act's provisions. Many permanent resident aliens are of childbearing age, and their United States-born children are United States citizens from birth. As a result, the overwhelming majority of "immigrant families" (families with at least one noncitizen parent) are actually "mixed-status" families in which one or more members are noncitizens (typically parents or children who were born outside the United States) and one or more members are citizens (typically children born in the United States). M. Fix and W. Zimmerman, *All Under One Roof: Mixed-Status Families in an Age of Reform* 4 (Urban Inst., June 1999) [hereinafter *All Under One Roof*]. Mixed-status families make up 9% of all United States families. *Id.* at 2.

Although only the noncitizen members of mixed-status families lost their statutory eligibility for federal benefits under the Welfare Reform Act, citizen children in those families certainly feel the effects of the Welfare Reform Act's discrimination against their noncitizen parents or siblings. In the first place, many noncitizen parents do not even apply for benefits on behalf of their citizen children. *Id.* at 21. Even if they apply, moreover, mixed-status families' overall resources are reduced when noncitizens' benefits are terminated. *Id.* at 23. For example, when noncitizens are barred from receiving Food Stamps, all members of mixed-status families in which those non-

citizens live suffer the consequences of the household's reduced food budget. *Id.*

The Welfare Reform Act's effect on mixed-status families is one illustration of a broader issue—the chilling effect of the Welfare Reform Act's treatment of permanent resident aliens. Many studies have documented that use of welfare benefits by *eligible* immigrants and their family members has dropped much more dramatically since enactment of the Welfare Reform Act than would be expected based on the scope of the Welfare Reform Act and relevant demographic and economic trends. See generally *All Under One Roof* at 21; W. Zimmerman and M. Fix, *Declining Immigrant Applications for Med-Cal and Welfare Benefits in Los Angeles County* (Urban Inst., July 1998); *Legacies* at 1585-86; United States Department of Agriculture, Office of Analysis, Nutrition and Evaluation, Food and Nutrition Service, *Who Is Leaving the Food Stamp Program? An Analysis of Caseload Changes from 1994 to 1998* 3-5 (August 1999). Although the causes of this phenomenon are not fully understood, several possible causes have been identified, including genuine confusion or lack of understanding about the complex and constantly changing eligibility rules, which differ from program to program, and fear that applying for benefits may obligate the applicant to repay benefits received at some point in the future, provide the INS with grounds for deportation or denial of naturalization, or lead to a finding that the applicant is ineligible to sponsor other immigrants at some point in the future. *Legacies* at 1585-86. Further, citizenship documentation requirements may deter or bar some particularly vulnerable groups—such as homeless persons—from applying or qualifying for benefits, even if they are eligible. See, *e.g.*, National Law Center on Homelessness and Poverty, *Hungry and Homeless: Barriers to the Receipt of Food Stamps*

by Homeless People 12-13 (November 1999) (77% of service providers reported their homeless clients were denied Food Stamps due to lack of documentation).

4. Contrary to popular perception, many immigrants do not have a practical way to avoid the consequences of the Welfare Reform Act's provisions restricting immigrants' access to welfare benefits. One widespread misperception is that permanent resident aliens whose eligibility for welfare benefits was terminated by the Welfare Reform Act can readily regain their eligibility by naturalizing. This overlooks the difficulty many immigrants have in naturalizing. Many immigrants are unable to naturalize because they cannot pass the citizenship and language tests that are required for citizenship. Not surprisingly, many disabled and elderly immigrants—precisely the groups that are most in need of government assistance—have particular difficulty in satisfying the language and citizenship test requirements. See *Elderly Legal Immigrants* at 18. A recent study in Illinois sought to estimate the percentage of permanent resident aliens who will complete five years of residency in the United States (as required for naturalization), but will be unable to speak English well and will therefore have difficulty passing the language and citizenship exam, in the next five years. R. Paral, *Citizenship 2000: Illinois Immigrants and Naturalization Needs* 6 (Report to the Fund for Immigrants and Refugees and the Illinois Department of Human Services, 1999) (hereinafter *Citizenship 2000*). That study estimated that 37.6% of immigrants otherwise eligible to naturalize will be unlikely to be able to do so because of language difficulties alone. *Id.*

Other immigrants are prevented from naturalizing because of bureaucratic delays. Immigrants are ineligible for naturalization until they have continuously resided in the United States for 5 years. 8 U.S.C. § 1427. Yet recent

studies have found that the INS frequently takes from 14 to 24 months to process applications after they are submitted. See, *e.g.*, R. Wasem, *Naturalization Trends, Issues, and Legislation* (Congressional Research Service, 1998); *Legacies* at 1582; *Citizenship 2000* at 13-14. During the waiting period, immigrants remain ineligible for benefits unless they qualify under one of the narrowly drawn exceptions. See 8 U.S.C. § 1611(a).

Another misperception is that needy immigrants can simply look to their sponsors for financial support. *E.g.*, Rep. Lamar Smith, *Immigration and Welfare Reform: Finally Taxpayers Are Being Considered*, USA Today Magazine, March 1, 1997. This view overlooks the fact that many legal permanent residents—including many immigrants who enter the United States on work visas, immigrants who are permitted to enter under diversity visas, and immigrants who were granted amnesty under the Immigration Reform Act of 1986—do not have sponsors. See J. Daskal and D. Super, *Why Can't All Immigrants Be Cared For by Sponsors?* (Center on Budget and Policy Priorities, April 14, 1997). Even sponsored immigrants may need to seek assistance if their sponsors die, become disabled, become indigent, or cannot be located when the immigrants require financial assistance.

5. As pointed out in the Petition, the decision below is one in a series of lower court decisions misreading *Mathews* v. *Diaz*, 426 U.S. 67 (1976), as authority for upholding virtually any federal legislation denying any type of government benefit to noncitizens. See Pet. at 16-17. If the decision below is allowed to stand, the lower courts' persistent misreading of *Diaz* will become even more entrenched. Indeed, given the limits on the resources available to support litigation on behalf of poor people, and given the need to allocate those resources to the most

promising types of cases, a denial of certiorari would make it unlikely that challenges to federal discrimination against noncitizens will even be brought in the future. *Amici* respectfully submit that Congress may not disqualify legal immigrants from receiving government benefits on the sole basis that they are noncitizens and that this Court should grant certiorari to make clear that the Equal Protection Clause protects noncitizens in this context.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 23, 1999

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Supreme Court, U.S.
FILED
DEC 27 1999

No. 99-898

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BRIEF OF UNITED STATES CONFERENCE OF MAYORS, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INSTITUTE REPORT

Wendy Zimmerman & Karen C. Tumlin, *Patchwork Policies: State Assistance for Immigrants under Welfare Reform* (Urb. Inst. 1999) 9, 10

No. 99-898

In the Supreme Court of the United States

CITY OF CHICAGO, *et al.*,

Petitioners,

v.

DONNA E. SHALALA, *et al.*,

Respondents,

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF UNITED STATES CONFERENCE OF MAYORS, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

This *amici curiae* brief is submitted in support of the Petitioners, City of Chicago and its officials. By letters filed with the Clerk of the Court, Petitioners and Respondents have consented to the filing of this brief.[1]

[1] Pursuant to Supreme Court Rule 37.6, *amici* state that the brief in its entirety was drafted by *amici curiae* and their counsel. No monetary contribution toward the preparation or submission of this brief was made by any person other than *amici curiae*, their members, or their counsel.

STATEMENT OF INTEREST OF *AMICI CURIAE*

The United States Conference of Mayors is the official nonpartisan organization of cities with populations of 30,000 or more. There are about 1,100 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor. In addition, associate membership is offered to mayors of cities with populations under 30,000. The work of the Conference is guided by several Standing Committees and task forces, and every mayor in the Conference participates directly in the debate and selection of current policy positions.

Founded in 1935, the National Association of Counties ("NACo") is the only national organization in the country that represents county governments. NACo's membership totals over 1,800 counties, representing over 75 percent of the nation's population. With headquarters on Capitol Hill, NACo's primary mission is to ensure that the county government message is heard and understood by all levels and branches of the federal government.

The National League of Cities ("NLC") is the country's largest and most representative organization serving municipal governments. Founded in 1924 as the American Municipal Association by ten State municipal leagues, today its direct members include 49 State municipal leagues and more than 1,500 communities of all sizes. Through the membership of the State municipal leagues, NLC represents more than 18,000 municipalities. Although most of the nation's larger municipalities are members of the league, more than 75 percent of NLC's direct members have populations less than 50,000, and small cities, towns and villages play an equal and key part in the activities of the organization.

The International City/County Management Association ("ICMA") is a professional and educational organization

representing appointed managers and administrators in local governments throughout the world. Its purposes are to enhance the quality of local government and to support and assist professional local administrators in the United States and other countries. From its foundation in 1914, ICMA has had a commitment to the preservation of the values and integrity of representative local government and local democracy and a dedication to the promotion of efficient and effective management of public services.

The International Municipal Lawyers Association ("IMLA") is a nonprofit professional organization that has been an advocate and resource for local government attorneys since 1935. Owned solely by its members, IMLA supports the development of fair and realistic legal solutions and provides its members with information about, and solutions to, the profusion of legal issues facing its membership today. IMLA serves as a clearinghouse of local law information for its more than 1,400 members. It collects from and disseminates information to its membership across the United States and Canada and helps governmental officials prepare for litigation and develop new local laws.

The *amici* represent the interests of local governments, which bear the brunt of the federal legislation at issue in this case. The *amici* have no power or control over decisions to admit, exclude, or deport immigrants. The federal government has exclusive power over these decisions. By shifting the obligation to maintain and support legal aliens who have become indigent to the States, the federal government has placed what amounts to an unfunded mandate on local governments. Locals governments receive no assistance from the federal government in absorbing the costs of care for this vulnerable population. The *amici* have a strong interest in determining the proper limits on the federal government's power to discriminate against noncitizens, and

therefore the *amici* urge the Court to take this case so as to clarify those limits.

SUMMARY OF ARGUMENT

The court below held that while equal protection requires States not to discriminate against aliens, it allows the federal government to discriminate against noncitizens if the discrimination has merely a rational basis in the federal government's desire to save money. The court held that because the federal government enjoys sole authority over the decision to admit or exclude an alien and the terms on which the alien is admitted, the Congress also has the power to discriminate against aliens and in favor of citizens in its disbursal of federal benefits. This case offers the Court the opportunity to make it clear that there is but a single equal protection that applies to the States and to the federal government alike.

The ruling of the court below is not supported by the decisions of this Court and, if it remains untested, will effect a fundamental shift of the responsibility for caring for aliens from the federal government to the States. The Welfare Reform Act generally moves to put welfare policy in the hands of States. When it dumps responsibility for the care of indigent noncitizens onto state and local governments, it effects what amounts to an unfunded mandate. The Act by definition limits the benefits only of those noncitizens who are unable to care for themselves, and thus leaves States and local governments only the Hobson's choice of relieving poverty at once or dealing with its effects over time.

Although it contains broad language that is easily misinterpreted, *Mathews v. Diaz*, 426 U.S. 67 (1976), does not establish that all federal legislation affecting noncitizens is

subject only to rationality review. The Court should grant certiorari in this case to make clear an important basis of the decision in *Hampton v. Mow Sun Wong*, 426 U.S. 88, 116 (1976): that *Diaz* had left undecided the limits of Congress's actions towards noncitizens. These limits remained unclear because neither case decided how much of federal legislation that affects noncitizens is undertaken pursuant to Congress's immigration power. The Court should hear this case in order to demonstrate that the immigration power extends to measures regulating directly to whether noncitizens may enter or remain in the country and to the terms of naturalization, but no further.

The Court should grant certiorari and hear argument in this case in order to establish the precise limits of Congress's freedom to discriminate against noncitizens admitted to the United States under Congress's laws and its ability to impose the burdens of that obligation on state and local governments.

ARGUMENT

I. THE RULING BELOW WOULD EFFECT A FUNDAMENTAL CHANGE IN FEDERAL-STATE RELATIONS

By holding that there are two equal protection standards for aliens, one applicable to the States and a second less restrictive one applicable to the federal government, the court below created a constitutional structure that fails to treat State and local governments "in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation." *Alden v. Maine*, 119 S. Ct. 2240, 2263 (1999). As this Court has recognized, "the allocation of scarce resources among competing needs and interests lies at the heart of the political process." *Id.* at 2264. Those scarce

resources include welfare benefits paid for from the taxes of city and state residents. The Equal Protection Clause, as interpreted by this Court, requires State and local governments to allow discrete and insular minorities such as aliens, who cannot use the political process to help themselves, to share in the allocation of scarce resources without distinction. *See Graham v. Richardson*, 403 U.S. 365, 374 (1971); *cf. Hampton v. Mow Sun Wong*, 426 U.S. at 102-03 (the rule against employment of noncitizens in the civil service "has its impact on an identifiable class of persons who, entirely apart from the rule itself, are already subject to disadvantages not shared by the remainder of the community. Aliens are not entitled to vote and . . . are often handicapped by a lack of familiarity with our language and customs. . . . By reason of the Fifth Amendment, such a deprivation must be accompanied by due process."). Those same disqualifications which prevent aliens from protecting themselves in the political process at the state and local levels and which justify the application of strict scrutiny to state and local legislation that discriminates against aliens, however, also prevent aliens from protecting themselves in the federal political process. This minority is just as discrete, just as insular, and at least as powerless when facing the full force of the federal government. Nor does the federal government's interest in saving welfare funds differ qualitatively from that which in the State "'cannot justify an otherwise invidious classification,'" *Graham*, 403 U.S. at 375 (quoting *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969)).

Holding the federal government to a different equal protection standard than the States violates basic principles of federalism:

> The federal system established by our Constitution preserves the sovereign status of the States in two ways. First, it reserves to them a substantial portion

> of the Nation's primary sovereignty, together with the dignity and essential attributes inhering in that status. . . . Second, even as to matters within the competence of the National Government, the constitutional design secures the founding generation's rejection of "'the concept of a central government that would act upon and through the States' in favor of 'a system in which the State and Federal Governments would exercise concurrent authority over the people—who were, in Hamilton's words, "the only proper objects of government."'"

Alden, 119 S. Ct. at 2247 (quoting *Printz v. United States*, 521 U.S. 898, 919-20 (1997) (quoting The Federalist No. 15, at 109)); *accord New York v. United States*, 505 U.S. 144, 166 (1992) ("[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States"). Thus, "[a]lthough the Constitution grants broad powers to Congress, our federalism requires that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation." *Alden*, 119 S. Ct. at 2263.[2]

By holding that Congress may discriminate against legal aliens and in favor of citizens to save money, the court below effectively gave Congress the power to impose an unfunded mandate, shifting the onus to make the unpopular political

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[2] *See also U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring) ("Federalism was our Nation's own discovery. The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other. The resulting Constitution created a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it.").

decisions to provide benefits for this vulnerable population from the federal government to the States and local governments. *See id.* at 2264 (expressing concern with congressional statute that would threaten financial integrity of the States and "giv[e] Congress a power and a leverage over the States that is not contemplated by our constitutional design").

The Welfare Reform Act (the "Act"), and later legislation amending it, directly and impermissibly discriminates against noncitizens in the provision of welfare benefits. Subject to certain limited exceptions, the Act makes noncitizen legal permanent residents who enter the country after August 22, 1996 ineligible for benefits from the Supplemental Security Income Program, 42 U.S.C. §§ 1381 *et seq.* ("SSI"), or the Food Stamp Program, 7 U.S.C. §§ 2011 *et seq.*[3] Those who entered before that time but were not receiving benefits on that date may receive SSI benefits only if they become blind or disabled, Pub. L. No. 105-33, § 5301, 111 Stat. 251, 297 (1997), and may receive Food Stamps only if they are disabled, elderly or children, Pub. L. No. 105-185, §§ 504, 506, 507, 112 Stat. 578-79 (1998). Legal resident immigrants, again subject to certain limited exceptions, cannot receive "[f]ederal means-tested public benefits" for five years after they enter the country. *See* 8 U.S.C. § 1613. Such benefits include Temporary Assistance for Needy Families, 42 U.S.C. §§ 601 *et seq.* ("TANF"), and Medicaid benefits, 42 U.S.C. §§ 1396 *et seq.* *See* Cert. Pet. at 3 n.2. Persons who are United States citizens are not subject to the same limitations.

These limitations shift the burden of caring for indigent noncitizens to local governments, creating an unfunded

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[3] *See* Welfare Reform Act, Pub. L. No. 104-193 §§ 402-03, 110 Stat. 2105, 2113-24 (1996).

mandate, in two ways. First, for those state and local governments that already had some safety net benefit programs in place before the passage of the Act, it greatly increases the burden on those programs. Many state and local governments have programs that provide cash or health benefits to residents. *See* Wendy Zimmerman & Karen C. Tumlin, *Patchwork Policies: State Assistance for Immigrants under Welfare Reform* 3-4 (Urb. Inst. 1999) ("Zimmerman"). Under *Graham v. Richardson*, 403 U.S. 365 (1971), these governments are required to grant these benefits on an even-handed basis to citizens and legal aliens alike. Because the Act severely limits the federal assistance for which noncitizens can qualify, it necessarily increases the number of noncitizens—against whom local governments are prohibited from discriminating—who qualify for such programs and to whom these governments will be forced to grant benefits under these programs. *See* Zimmerman at 31-38.

The facts of this case provide an example of that burden. As alleged in the complaint, Chicago operates an "emergency food program, a summer food program, rental assistance, transitional and overnight shelter programs, and case management services." (Complaint ¶ 88.) The City provides further programs for Chicago residents with disabilities, health care for low-income families, and for elderly residents. (*Id.* ¶¶ 89-91.) Assuming that the City makes no changes to these programs, the estimated effect of the change in federal law would be millions of dollars in extra expenditures. (*Id.*) Moreover, that burden is not limited to the City of Chicago. If the Court allows the Act's discriminatory provisions to stand, state and local governments throughout the Nation that provide safety net programs face the burden of increased spending under such programs. To limit spending on these programs to pre-Act levels, the governments would have to take separate legislative action cutting back on the programs,

and would have to do so in a manner that would not discriminate against noncitizens.

Second, independent of any increase in use of preexisting safety nets, State and local governments bear the brunt of this legislation because they will be confronted with the new immigrant poverty created by federal legislation. In many cases, States have acted to restore benefits that the federal government had removed. *See* Zimmerman at 22-23. But even States and localities that provide no new benefits must bear the costs of increasing unrelieved poverty, including homelessness, hunger, and state emergency health care costs.

Congress's imposition of this unfunded mandate was not accidental. In passing the Welfare Reform Act, Congress specifically intended to pass the burden of dealing with noncitizen poverty from the federal government to the States as a way to protect the federal fisc.[4] By maintaining welfare benefits for citizens who enjoy the franchise and vote in congressional elections while eliminating benefits for noncitizens (whose main difference from citizens for purposes of this case is that they do not vote in congressional elections), Congress managed to reduce the burden on the federal fisc and shift that burden to the States without absorbing any of the direct political cost of that decision.

Moreover, if the reasoning of the court below is not limited by this Court, the federal government could shift the responsibility to make a whole range of politically unpopular decisions to the States. The decision below held that the federal government was not prohibited by the due process

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[4] *See, e.g.*, 142 Cong. Rec. S9352, S9359 (daily ed. Aug. 1, 1996) (remarks of Sen. Exon), S9372 (remarks of Sen. Coats); 142 Cong. Rec. S9387, S9391-92 (daily ed. Aug. 1, 1996) (remarks of Sen. Grassley); 142 Cong. Rec. H9392, H9400 (daily ed. July 31, 1996) (remarks of Rep. Weldon); H.R. Conf. Rep. No. 104-725, at 262 (1996).

clause from discriminating against legal aliens in the provision of Social Security and health benefits. However, its reasoning cannot be limited to welfare benefits. If the decision below is correct, Congress could also require federal law enforcement agencies to commit all their resources to fighting crime against citizens and prohibit them from spending federal money to protect legal aliens, thereby requiring State and local governments to devote most of their scarce resources to protecting aliens. Likewise, nothing in the lower court's reasoning would prohibit the federal government from deciding, for example, not to enforce federal environmental protection or consumer protection statutes if legal aliens are victimized, leaving the entire burden of these expenses to the States. The States would be forced to shoulder the problems of both citizens and aliens, while the federal government could spend its resources on citizen-voters alone. But Congress's plenary power over immigration cannot be a plenary power to abdicate responsibility for policies dealing with noncitizens, and it cannot be a plenary power to push onto the States all the consequences of an immigration system over which they can have no control.

II. THE RULING BELOW IS NOT SUPPORTED BY THE DECISIONS OF THIS COURT

A. The Federal Government's Discrimination against Noncitizens Is Not Reviewed under the Rational Basis Standard

The court below ruled that federal legislation discriminating against noncitizens is subject only to rationality review, relying upon this Court's decision in *Mathews v. Diaz*, 426 U.S. 67 (1976). The court stated that *Diaz* "made clear that the standard of scrutiny applied to state legislation in

Richardson does not govern judicial review of federal legislation involving alienage."[5] This Court should grant certiorari to determine whether that reliance was misplaced.[6]

Mathews v. Diaz involved the limited question whether Congress could make a legal alien ineligible for participation in the federal medical insurance program, Medicare, during the first five years of that alien's residence in the United States. *Id.* at 69. Unlike the Welfare Act, the Medicare program was "financed in equal parts by the United States and by monthly premiums paid by individuals aged 65 or older who choose to enroll." *Id.* at 70 n.1. Moreover, the legislation did not effect a permanent ban; after five years of continuous residence, a permanent alien over 65 years old was eligible for participation in the plan. The Court upheld the legislation both because some "durational requirement" was "necessary to protect the fiscal integrity of the program" and to ensure that "transients" who had not paid premiums would not be eligible to receive benefits. *Id.* at 83-84.

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[5] Cert. Pet. App. 9a. The Seventh Circuit's mistaken reliance on *Diaz* has been shared by other courts. *See Rodriguez v. United States*, 169 F.3d 1342, 1350 (11th Cir. 1999); *Kiev v. Glickman*, 991 F. Supp. 1090, 1095-97 (D. Minn. 1998); *Abreu v. Callahan*, 971 F. Supp. 799, 807-811 (S.D.N.Y. 1997). *See also Cid v. South Dakota Dep't of Soc. Servs.*, 598 N.W.2d 887, 891-93 (S.D. 1999); *Moving Phones Partnership v. FCC*, 998 F.2d 1051, 1056 (D.C. Cir. 1993); *Sudomir v. McMahon*, 767 F.2d 1456, 1464-67 (9th Cir. 1985).

[6] The continuing validity of *Diaz* is in any case called into question by the intervening decision in *Adarand Constructors, Inc. v. Pena*, which clarified the precise relation between the restraint the Equal Protection Clause of the Fourteenth Amendment imposes on State governments and that the Due Process Clause puts on the federal government. 515 U.S. 200, 231-32 (1995) ("the Constitution imposes upon federal, state and local governmental actors the same obligation to respect the personal right to equal protection of the laws").

There is a substantial question whether *Diaz* held that all federal legislation affecting aliens is subject only to rationality review. The Court began its analysis by the strong statement that "[t]he Fifth Amendment, as well as the Fourteenth Amendment, protects every one of [the millions of aliens within the jurisdiction of the United States] from deprivation of life, liberty or property without due process of law." *Id.* at 77. After noting that the federal government has "power over naturalization and immigration" and that "[t]he exclusion of aliens and the reservation of the power to deport have no permissible counterpart in the Federal Government's power to regulate the conduct of its own citizenry," the Court then stated that "[t]he fact that an Act of Congress treats aliens differently from citizens does not in itself imply that such disparate treatment is 'invidious.'" *Id.* at 79-80 (citations omitted). The Court upheld the legislation because the appellees had not "identified a principled basis for prescribing a different standard than the one selected by Congress [but had], in effect, merely invited [the Court] to substitute [its] judgment for that of Congress in deciding which aliens shall be eligible to participate in the supplementary insurance program on the same conditions as citizens." *Id.* at 83-84.

"There is only one Equal Protection Clause. It requires every State to govern impartially. It does not direct the courts to apply one standard of review in some cases and a different standard in other cases." *Craig v. Boren*, 429 U.S. 190, 211-12 (1976); *see also Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 246 (1995) (Stevens, J., dissenting) ("if the Court in all equal protection cases were to insist that differential treatment be justified by relevant characteristics of the members of the favored and disfavored classes that provide a legitimate basis for disparate treatment, such a standard would treat dissimilar cases differently while still recognizing that there is, after all, only one Equal Protection Clause"). *Diaz*

does not use the term "rationality review," nor does its inquiry take that form.[7] The opinion focuses *not* on the question of whether the line drawn was rational, but instead on whether the challenger had advanced "principled reasoning" that would both invalidate the line and suggest where it might more properly be drawn, because "some line is essential." *Id.* at 82-83. This analysis is very far indeed from rationality review.

That something more is required is rendered clear by *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976), a case decided on the same day as *Diaz*. *Mow Sun Wong* involved a Civil Service Commission rule barring noncitizens from all federal civil service employment. While the federal government in *Mow Sun Wong*, like the court below, argued that the rule was justified by the goals of creating an incentive to naturalize and of saving funds, the Court refused to decide the case on this basis. *Id.* at 104. The Court stated that legal aliens are a "discrete and insular minority," who "are already

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[7] The statement in *Diaz* that the restrictions on noncitizens there were not "wholly irrational," 426 U.S. at 83 (quoted by the court below, App. at 9a), does *not* mean that the case employed rationality review, as a look at Justice Stevens's parallel articulation in his concurrence in *Craig v. Boren*, 429 U.S. 190 (1976), reveals. The concurrence begins its examination of the justifications of that case's law which burden young adult men by stating: "The classification is not totally irrational." *Id.* at 213. That statement does not indicate that rational basis is being used. Indeed, the concurrence immediately goes on to conclude that "[n]evertheless . . . the justification [is] unacceptable." *Id.* Examining a classification to see whether it lacks all rational basis is merely the first step in a more nuanced review which determines whether the justifications offered for a classification outweigh its invidiousness. *See also City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 514 (1989) (Stevens, J., concurring) ("instead of engaging in a debate over the proper standard of review to apply in affirmative-action litigation, I believe it is more constructive to try to identify the characteristics of the advantaged and disadvantaged classes that may justify their disparate treatment").

subject to disadvantages not shared by the remainder of the community," *id.* at 102 & n.22 (citation omitted), and that "[t]he concept of equal justice under law is served by the Fifth Amendment's guarantee of due process, as well as by the Equal Protection Clause of the Fourteenth Amendment," *id.* at 100. The Court specifically rejected the idea that "the decision to limit employment of noncitizens in the federal competitive civil service is . . . beyond the reach of the equal protection principle." *Id.* at 99-101 & n.16.

While the Court stated that "there may be overriding national interests which justify selective federal legislation that would be unacceptable for an individual State," *id.* at 100, the Court held that the Constitution required "judicial scrutiny" of that asserted justification. *Id.* at 103. First, "[w]hen the Federal Government asserts an overriding national interest as justification for a discriminatory rule which would violate the Equal Protection Clause if adopted by a State, due process requires that there be a legitimate basis for presuming that the rule was actually intended to serve that interest." *Id.* Second, the Court must "evaluat[e] the sufficiency of the asserted justification for the rule." *Id.* at 105.

Finding that the rule exceeded the authority of the Civil Service Commission acting alone, the Court specifically reserved the question of whether a similar ban could be imposed by Congress. *Id.* at 116; *see also id.* at 117 (Brennan, concurring). If *Diaz* had settled the question by determining that congressional action disadvantaging noncitizens was valid if supported by any rational justification, then there would be nothing to reserve in *Mow Sun Wong,* since the justifications raised were not wholly irrational.[8]

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[8] Not only did the majority believe that Congress's power to deny civil service jobs to noncitizens was questionable, but two justices wrote separately to emphasize this point. 426 U.S. at 117. *Mow Sun Wong*'s

(continued...)

Mow Sun Wong thus makes it clear that the Court must engage in the same type of analysis when confronting a due process challenge to federal legislation as when confronting an equal protection challenge to state legislation. While the federal government may have different interests than those of an individual State, both federal and state interests are still subject to heightened scrutiny.

B. Congress's Immigration Power Should Be Limited to Matters Directly Relating to Naturalization and Immigration

DeCanas v. Bica, 424 U.S. 351 (1976), examined the limits of the immigration power and came to the reasoned conclusion that immigration regulation did not encompass every law that "has some purely speculative and indirect impact on immigration," but that the federal immigration power concerns "essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." *Id.* at 355. There is no reason to abandon that definition when looking at Congress's plenary power over immigration. "Resident aliens, like citizens, pay taxes, support the economy, serve in the Armed Forces, and contribute in myriad other ways to our society." *In re Griffiths*, 413 U.S. 717, 722 (1973).

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[8] (...continued)
avoidance of the reserved question is not a simple accident of that opinion, but key to it. That case invalidates a Civil Service Commission rule as not "required" by Congress and the Executive even though the rule had been in place since the Civil Service Commission's inception in 1883, though members of Congress assumed that it would create such a rule, though both Congress and the President had repeatedly modified the rule over the years, and though the rule in question was authorized by an Executive Order granting the Commission the power to "establish standards with respect to citizenship" for civil service applicants. *Id.* at 106-12.

The programs at stake here are simply not related to admission into the country.[9] As Senator Alan K. Simpson has made clear, U.S. law since at least 1882 has prohibited the immigration of anyone who is "likely at any time to become a public charge."[10] When Congress can and does address immigration and naturalization directly through laws dedicated to those subjects, there is no need to extend such a broad power beyond the limits of such laws into legislation directed towards balancing the needs and burdens of the indigent in our society.

If *Diaz* is not so limited, there is no clear limit to Congress's discriminatory power over noncitizens. Almost anything which affects noncitizens, certainly anything which impacts them negatively, has an effect on incentives to immigrate and/or to naturalize. If Congress's arbitrary power is not tightly tethered to matters directly dealing with immigration or naturalization, it knows no natural bounds. Congress could not only deprive noncitizens of all public

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[9] Nor were these provisions really intended to aim at any immigration issue. Since immigration laws already weed out prospective immigrants likely to become reliant on public benefits, noncitizens who do end up on public assistance must have been unlikely to do so when they arrived in the country. But depriving noncitizens who unforeseeably fall into severe need of the aid they require can have no significant effect on the rational expectations of those considering emigration to this country. Nor will it affect naturalization except at the margins.

When Congress wants to affect immigration, it does so directly through immigration laws. It is there that the question of likelihood of becoming a public charge is best addressed; the unfortunate reality of those who fall into unexpected need is what public benefits laws are about, and to that unfortunate reality citizenship status should matter no more than the color of the needy person's skin.

[10] *The Use of Supplemental Security Income and Other Welfare Programs by Immigrants: Hearings Before the Subcomm. on Immigration of the Senate Comm. on the Judiciary*, 104th Cong. 1-2 (1997) (opening statement of Sen. Simpson quoting Immigration Act of 1882).

employment, it could deprive them of property rights or of abortion rights (or, perhaps more plausibly, could impose sterilization on indigent noncitizens).

The cases invalidating state discrimination against noncitizens rest on more than the principle that such discrimination is preempted by Congress. They rest on a belief that dislike of aliens based on their alienage is wrong. *See Mow Sun Wong*, 426 U.S. at 102; *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973); *In re Griffiths*, 413 U.S. at 721; *Graham*, 403 U.S. at 372. That is the basis for *Graham*'s assertion that "classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny. 403 U.S. at 371-72. And that belief is just as palpable in *Mow Sun Wong*. *See* 426 U.S. at 107 (commenting on the unacceptableness of regarding "'foreigners' as a somewhat less desirable class of persons than American citizens," and noting the cases "requiring that aliens be treated with the dignity and respect accorded to other persons").

In legislation directly involving the conditions under which noncitizens can enter and reside in the country, Congress's distinctions may appropriately be virtually beyond review. But by limiting the scope of the immigration power, the field where what appears as offensive discrimination cannot be reviewed is also limited. Outside that limited scope, what looks like the most offensive discrimination, otherwise barred by the Constitution, should be treated as such.

A noncitizen who is denied benefits under this bill may otherwise be, in all relevant ways, identically situated to a citizen who receives them. They both may have worked identical hours and paid identical amounts into Social Security and taxes. What else can the decision to deny benefits to the foreigner, despite the work he has performed and the amount he has put into the system, be called other than invidious

discrimination? In both cases, Congress desires that the person become self-sufficient. If the fact of one's lack of citizenship status were sufficient to warrant such greater desire for self-sufficiency that the noncitizen could legitimately be denied benefits, then there is simply no possibility of separating irrational prejudice against foreigners from a well-regulated immigration system. And, indeed, the legislative history is replete with statements indicating that noncitizens are precisely less "desirable" and less deserving.[11] Legislation like this from the federal government fosters a climate of discrimination and intolerance throughout the country and thus requires greater scrutiny than the cursory review the lower courts have afforded federal laws that discriminate against noncitizens.

If, on the other hand, Congress's plenary power over immigration is clearly limited to immigration laws, then the attempt to disadvantage noncitizens legitimately admitted to the country stands revealed as the blatant prejudice that it is.

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[11] *See, e.g.*, 142 Cong. Rec. S9387, S9390 (daily ed. Aug. 1, 1996) (remarks of Sen. Helms); S9352, S9357 (remarks of Sen. Nickles); 142 Cong. Rec. H9392, H9401 (daily ed. July 31, 1996) (remarks of Rep. Smith); *Immigration and Public Welfare Benefits: Hearing Before the Senate Comm. on the Budget*, 104th Cong. 72 (1996) (remarks of Sen. Dominici); *The Use of Supplemental Security Income and Other Welfare Programs by Immigrants: Hearing Before the Subcomm. on Immigration of the Senate Comm. on the Judiciary*, 104th Cong. 2-3 (1997) (remarks of Sen. Simpson). Congress routinely groups noncitizens with felons as groups abusing the welfare system. *See* 142 Cong. Rec. S9387, S9404 (daily ed. Aug. 1, 1996) (remarks of Sen. Thurmond); 142 Cong. Rec. H9392, H9400 (daily ed. July 31, 1996) (remarks of Rep. Weldon), H9421 (remarks of Rep. Goodlatte) ("By denying convicted felons and noncitizens taxpayer-funded assistance, we take away the scourge previously associated with all welfare benefits"); H.R. Conf. Rep. No. 104-725, at 262 (1996).

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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No. 99-898

Supreme Court, U.S.
FILED
DEC 23 1999

IN THE

Supreme Court of the United States

CITY OF CHICAGO,

Petitioner,

—v.—

SHALALA, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF THE ASIAN LAW CAUCUS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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I. INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae, the Asian Law Caucus (the "Caucus"), has served poor Asian Americans longer than any other civil rights or legal services organization in the country. The Caucus regularly hosts free clinics for the Asian American community to advise and counsel them about immigration issues. The Caucus also represents poor Asian Americans before courts and administrative agencies, helping them to become citizens and to get the government benefits to which they are entitled. In short, the Caucus has a deep and abiding interest in this country's immigration and welfare policies.

This action falls squarely within this interest, raising questions about the scope and nature of judicial deference to the federal government's power over immigrants. The legislative and executive branches of the federal government have long been understood to have virtually unreviewable power over matters of immigration. Recent judicial decisions, without heed to decades of Supreme Court case law in this area, have extended this power over immigration to reach any matter involving immigrants. The Caucus submits this brief to assist this Court in its consideration of the distinction between power over immigration and power over immigrants.

II. SUMMARY OF ARGUMENT

Even as most Americans are enjoying a time of unparalleled prosperity, legal immigrants are poorer, hungrier, and sicker than they were just three years ago. This suffering is not the result of some economic quirk. It is a predictable consequence of a change in the treatment of legal immigrants by the federal government.

---

[1] The parties have consented to the filing of this brief. Copies of the letters of consent have been filed with the Clerk of the Court. This brief was not written in whole or in part by counsel for a party, and no person or entity other than the *Amicus Curiae*, their members, and their counsel made a monetary contribution to the preparation and submission of this brief.

In 1996, Congress enacted and the President signed the Personal Responsibility and Work Opportunity Reconciliation Act or, as it is more commonly known, the Welfare Reform Act ("Act"). The Act made good on the bipartisan promises to "end welfare as we know it" and to trim the budget while leaving current benefit levels virtually unchanged for most recipients. The only way to accomplish this goal was to declare a large class of recipients ineligible for benefits. Congress and the President settled on legal immigrants, who, of course, lack a voice in the political process.

Unvarnished acts of political expediency that involve a "discrete and insular" minority, such as the Welfare Reform Act, typically receive a hostile reception in the courts. *See, e.g.*, *Graham* v. *Richardson*, 403 U.S. 365, 371 (1971) (quoting *United States* v. *Carolene Prods. Co.*, 304 U.S. 144, 152-53, n.4 (1938). In this case, however, lower courts have been led astray by a misreading of the Court's opinion in *Mathews* v. *Diaz*, 426 U.S. 67 (1976), and have concluded that Congress and the President can discriminate against legal immigrants at will. These decisions are wrong and should be reversed. A writ of certiorari should be issued to bring these questions of national importance before this Court.

III. ARGUMENT

A. The Welfare Reform Act Has Caused Enormous Suffering.

Legal immigrants have always struggled to make ends meet. Prior to the passage of the Welfare Reform Act in 1996, more than one in four legal immigrants lived below the poverty line. Wendy Zimmerman & Karen C. Tumlin, *Patchwork Policies: State Assistance for Immigrants Under Welfare Reform* 58 (Urb. Inst., May 1999). The Act made a bad situation worse by denying immigrants access to basic federal benefits such as Temporary Assistance of Need Families (TANF), Supplemental Social Security (SSI), Medicaid and

food stamps. *See* Pub. L. No. 104-113, tit. iv, §§ 402-403, 110 Stat. 2262-67 (1996). Although certain benefits have since been restored to very limited classes of legal immigrants, legal immigrants as a group are poorer, hungrier and sicker than they were in 1996. Zimmerman & Tumlin, *supra*, at 58.

This unprecedented change in the nation's welfare policy has left many legal immigrants with nowhere to turn. The Act neither helped legal immigrants gain the skills and education necessary to get jobs nor assisted them through the often Byzantine naturalization process in time to preserve their benefits. Instead, it pushed legal immigrants and their families into abject poverty. The cruelest stroke of all befell the citizen children of non-citizen parents. Although not themselves cut off from federal assistance, they have suffered the consequences of this descent into poverty along with their families. Michael Fix & Wendy Zimmerman, *All Under One Roof: Mixed Status Families in an Era of Reform* (Urb. Inst., June 1999).

1. Hunger Increases Among Immigrant Households in the Wake of the Act.

The Act declared 935,000 legal immigrants ineligible for food stamps. Michael Fix & Jeffrey S. Passel, *Trends in Non-Citizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-1997* (Urb. Inst., Mar. 1999). Although benefits have been restored to some, *see* Agricultural Research Extension and Education Reform Act of 1997, Pub. L. No. 105-185, §§ 504, 506-507, 112 Stat. 578-79 (1998), more than 700,000 people who were once eligible for food stamps remain stricken from the rolls. Fix & Passel, *supra*. Predictably, legal immigrants now lack the food that they need. The consequences of this policy will be felt for years to come.

Legal immigrants now go hungry more often than any other identifiable segment of the population. Poverty regularly

forces 79% of Latino and Asian immigrant households in California, Texas and Illinois to cut their consumption of food below minimally sufficient levels. Physicians for Human Rights, *Press Release: Medical Group Finds High Prevalence of Food Insecurity and Hunger Among United States Legal Immigrant Populations* (May 7, 1998). *See also* California Food Policy Advocates, *The Impact of Legal Immigrant Food Stamp Cuts in Los Angeles and San Francisco Counties*, (May 28, 1998) (finding even more dramatic increases in hunger among legal immigrant households in San Francisco and Los Angeles following passage of the Welfare Reform Act). Moreover, nearly 10% of immigrant households suffer from "severe hunger." Physicians for Human Rights, *supra*. "Severe hunger" means frequently skipping certain meals or going without food for an entire day. *Id.* This rate of severe hunger is more than ten times that of the general population. *Id.*

Private charities have not been able to fill the gap left by the Welfare Reform Act, and will not be able to do so. Since passage of the Act, private shelters have been overrun. Food banks which served an average of 12 families a week prior to passage of the Act now serve up to 250 families a week. *See* All Things Considered, *Many Families Who Are a Mix of Citizens and Non-Citizens Find It Difficult to Receive Federal Welfare Assistance* (National Public Radio broadcast, Oct. 12, 1999) (transcript available in Lexis, News Library, Curnws File). This extraordinary surge in demand for free food has, for the first time, forced the charities and churches providing it to turn people away. *See* Cokie Roberts & Steven V. Roberts, *Hunger: A Startling Crisis*, USA Weekend, at 4 (Mar. 29, 1998). This crisis will grow in years to come as demand for food from private charity outpaces supply by more than 400%. *See* Center on Hunger, Poverty and Nutrition Policy, Tufts University, *Analysis of the Capacity of the Second Harvest Network to Cover the Federal Food Stamp Shortfall from 1997 to 2002* (1997).

The effects of the malnutrition engendered by the Welfare Reform Act will linger for years. Even mild hunger can cause irreparable damage. Hunger affects how children behave, learn and develop. *See* Tufts University Center on Hunger, Poverty and Nutrition Policy, *Statement on the Link Between Nutrition and Cognitive Development in Children* (1998) (suggesting that the consequences of hunger cost more than food necessary to cure it). Time does not remedy these effects. Children who go hungry today will almost certainly grow up to be less than fully productive adults. *Id.*

2. The Effects of the Act Stretch Beyond the Benefits It Denies Legal Immigrants.

The Welfare Reform Act has effectively severed legal immigrants and their citizen children from the national community. Some legal immigrants and their citizen children remain eligible for certain benefits even in the wake of the Act. Many, however, have failed to claim these benefits for fear of jeopardizing their or their family members' chances for permanent residency and citizenship. As a consequence, the American-born offspring of non-citizen immigrants have become a growing subclass of citizens who are suffering the consequences of the Act along with their non-citizen mothers, fathers, sisters and brothers. Michael Fix & Wendy Zimmerman, *All Under One Roof: Mixed Status Families in an Era of Reform* (Urb. Inst., June 1999).

Confusion and fear have reigned since passage of the Welfare Reform Act, leading many immigrants to forgo even the benefits for which they remain eligible. Non-citizen households' use of all welfare benefits fell by 35% between 1994 and 1997, while citizens' use of welfare fell by only 14%. Michael Fix & Jeffrey S. Passel, *Trends in Non-Citizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-1997* (Urb. Inst., Mar. 1999). Although immigrants represented only 10% of the households receiving welfare in

1994, they accounted for almost a quarter of the overall decline in welfare caseloads by 1997. *Id.* Neither naturalization rates, income levels nor the Act's specific cuts account for this difference between citizens and non-citizens. *Id.* Rather the Act has discouraged immigrants from applying for those health, nutrition and housing benefits that they are still eligible to receive. *Id.*

This unfortunate and unanticipated consequence of the Welfare Reform Act has profoundly affected regions with large immigrant populations. In Los Angeles, for example, even though eligibility requirements did not change, the number of legal immigrant-headed households claiming California state welfare benefits between 1996 and 1998 fell by more than 70%, even as citizen claims for benefits held steady. Wendy Zimmerman & Michael Fix, *Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County* (Urb. Inst., July 1998). Over this same period, claims by the citizen children of non-citizen parents fell by close to 50% while the claims of citizen children of citizen parents fell by a shade more than 5%. *Id.* In other words, non-citizen parents who lost federal benefits as a result of the Act are no longer applying for state benefits for their citizen children even though those children remain eligible for both state and federal benefits.

B. Although the Challenged Classifications Affect Immigrants, They Do Not Implicate the Sovereign Federal Power over Immigration and Should Not Receive Special Judicial Deference.

Laws singling out recognizable minority groups are typically subject to a rather searching inquiry by the courts. The Welfare Reform Act, unfortunately, has received a much warmer welcome. The lower courts, seizing upon language in this Court's opinion in *Mathews v. Diaz*, 426 U.S. 67 (1976), have concluded that Congress and the President's power over immigrants knows no bounds. *United States* v. *Santos-*

Riviera, 183 F.3d 367, 373 (5th Cir. 1999) (applying a "deferential rational basis test to federal statutes that classify based on alienage"), *cert. denied*, ___ S. Ct. ___, 1999 WL 1030096 (Dec. 6, 1999); *McLean* v. *Crabtree*, 173 F.3d 1176, 1185 n.11 (9th Cir. 1999) ("[I]n cases where federal interests predominate, judicial scrutiny of alienage classifications is relaxed to a 'rational basis' standard."); *Rodriguez* v. *United States*, 169 F.3d 1342, 1350 (11th Cir. 1999) ("[*Diaz*] is inescapably on point as to the level of scrutiny applicable in this case. It holds that a federal statute which discriminates among aliens in the provision of welfare benefits is subject only to rational basis scrutiny."); *Moving Phones Partnership L.P.* v. *FCC*, 998 F.2d 1050, 1056 (D.C. Cir. 1993) ("Supreme Court precedent instructs that classifications based on alienage in federal statutes are permissible so long as the challenged statute is not a 'wholly irrational' means of effectuating a legitimate government purpose."). The lower courts' understanding of *Diaz* is wrong.

This Court simply did not break with a century's worth of cases and render federal actions that affect immigrants immune from judicial review. In *Diaz*, this Court held that Congress can sometimes classify people based on their immigration status. This Court did not eliminate the distinction between power over immigration and power over immigrants.

The prevailing interpretation of *Diaz* threatens to disrupt checks on legislative and executive power long held by this Court. For a hundred years, this Court has carefully distinguished the regulation of immigration, to which the plenary power applies, from regulations affecting immigrants, to which it does not. By interpreting *Diaz* too broadly, lower courts have abandoned this distinction and, in so doing, have abdicated the role of the judiciary.

1. *Diaz* Does Not Give Congress and the President Free Rein to Discriminate Against Legal Immigrants.

By upholding a single alienage classification in *Diaz*, this Court did not signal that every such classification should be affirmed. Instead, this Court rejected the view that "all aliens must be placed in a single homogeneous legal classification." *Id.* at 78. The Court explained that there can be legitimate reasons for Congress and the President to make distinctions among aliens:

> For a host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other; and the class of aliens is itself a heterogeneous multitude of persons with a wide-ranging variety of ties to this country.

Id. at 78-79.

In *Diaz*, this Court cited the plenary power over immigration to show that federal distinctions among immigrants can be legitimate, not to suggest that this power thwarts review of any discrimination against immigrants at the hands of the legislative and executive branches of the federal government. As this Court stated in *Diaz*, the existence of the plenary power shows that "[t]he fact that an Act of Congress treats aliens differently from citizens does not *in itself* imply that such disparate treatment is 'invidious.' " *Id.* at 80 (emphasis added). In holding that not all such distinctions are necessarily invidious, this Court did not rule out the possibility that disparate treatment of aliens might be invidious.

In fact, this Court took the extraordinary step of restating the question presented on certiorari to avoid any possible misunderstanding of the case. As briefed and argued, the question before this Court in *Diaz* was "whether discrimination between citizens and aliens is permissible . . . ." *Id.* at 80.

After further review, the Court rejected this statement of the issue. It concluded that the case, in fact, raised a different question: "whether the statutory discrimination *within* the class of aliens—allowing benefits to some aliens but not to others—is permissible." *Id.* (emphasis in original). By simply answering this question with a yes, this Court in *Diaz* did not exclude the possibility that some alienage classifications might violate the Constitution. Nevertheless, lower courts have treated *Diaz* as if it answered the question initially posed on certiorari and not the question answered by this Court.

2. A Century of This Court's Precedents Must Be Ignored to Read *Diaz* as Granting Congress and the President Plenary Power over Immigrants.

Reading *Diaz* to say that the federal government has plenary power over immigrants rather than over immigration, the lower courts have ignored not only the long line of cases that draw this distinction but also the reasons underlying the distinction. The federal power to establish rules governing the admission, exclusion, deportation, and naturalization of aliens derives from a line of Supreme Court decisions dating back to the end of the nineteenth century. The Court in those cases explained that Congress and the President's power over immigration, like the state and federal governments' power to define political community, is an "incident of sovereignty." *Chae Chan Ping* v. *United States*, 130 U.S. 581, 609 (1889) (announcing the doctrine of congressional plenary power over immigration for the first time). *See also Fong Yue Ting* v. *United States*, 149 U.S. 698, 711-14 (1893) (describing the origins of the federal power over immigration as relating to the control of international relations); *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-89 (1952) (explaining that the immigration power is "vitally and intricately interwoven with contemporaneous polices in regard to the conduct of foreign

relations, the war power, and the maintenance of a republican form of government").

From the beginning, this Court has limited this plenary power to matters of immigration policy, again and again distinguishing the regulation of immigration from the mere regulation of non-citizens. In *Wong Wing* v. *United States*, 163 U.S. 228 (1896), the Court relied upon this distinction to invalidate a federal law that condemned any Chinese alien unlawfully present in the United States to a year of hard labor without jury trial or due process. Similarly, in *Keller* v. *United States*, 213 U.S. 138 (1909), the Court turned to this distinction in rejecting the argument that a federal statute criminalizing the harboring of an alien for prostitution was within the plenary power because of "its general effect upon the importation and exclusion of aliens." This Court made the same point in *Russian Volunteer Fleet* v. *United States*, 282 U.S. 481 (1931), holding that a non-citizen could not be denied access to federal court merely because the United States did not then recognize the Soviet Union.

This Court has reinforced this distinction between immigrants and immigration in a line of cases dealing with alienage restrictions by the States. These cases establish that judicial deference is appropriate only when the government acts in a sovereign capacity, and make clear that this sovereign power does not include placing restrictions on eligibility of resident immigrants for subsistence benefits. To fall within the government's sovereign functions, a classification must be related to self-government. In other words, it must involve "defining the scope of the community of the governed and thus of the governors as well." *Cabell* v. *Chavez-Salido*, 454 U.S. 432, 439-40 (1982). Alienage classifications, although "fundamental to the definition and government of a State," are "ordinarily irrelevant to private activity." *Ambach* v. *Norwick*, 441 U.S. 68, 75 (1979).

Unless a state-drawn distinction between lawful immigrants and citizens relates to these sovereign powers, that distinction is subject to exacting scrutiny. The political function doctrine exempts from strict scrutiny only those classifications inherent in "defining . . . the community." *Cabell*, 454 U.S. at 440. Thus, although restrictions on who may be a public school teacher, *Ambach*, 441 U.S. 68, or probation officer, *Cabell*, 454 U.S. 432, may be within the exception, restrictions on who may be a notary public are not, *Bernal* v. *Fainter*, 467 U.S. 216 (1984). Strict scrutiny must be applied whenever state alienage classifications strike "at the non-citizen's ability to exist in the community." *Foley* v. *Connelie*, 435 U.S. 291, 296 (1978). *Accord Moving Phones*, 998 F.2d at 1056 (applying the language in *Foley* in a challenge to a federal regulation).

In *Diaz*, this Court effectively held that because of its role in the federal system, the federal government has a slightly broader sovereign power than the States. Nonetheless, the concerns that raise suspicions about alienage classifications drafted by the States—the inability of aliens to vote, the lack of English-speaking skills among many aliens, and common misperceptions about aliens—apply equally to Congress and the President. The States cannot discriminate against aliens for reasons unrelated to self-government. In the same way, when Congress and the President discriminate against immigrants for reasons utterly removed from the core immigration functions, they are not entitled to the extraordinary deference afforded by the plenary power.

3. To Read *Diaz* as Allowing Congress and the President to Define the Scope of Their Plenary Power Abdicates the Judicial Role.

Congress and the President's sweeping discretion within the plenary power requires that the courts actively police the boundaries of this power. To maintain the separation of powers, the courts must prevent the legislative and executive

branches from overreaching the "judicially enforceable outer limits of [their] powers." *United States* v. *Lopez*, 514 U.S. 549 (1995). In the seminal case about judicial deference in the face of political questions, this Court highlighted the importance of its boundary-patrolling function:

> Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, *or whether the action of that branch exceeds whatever authority has been committed*, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.

Baker v. *Carr*, 369 U.S. 186, 211 (1962) (emphasis added).

Close judicial scrutiny is essential when Congress and the President seek to invoke their foreign policy powers to avoid checks on their domestic authority. Any "claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 638 (1952) (Jackson, J., concurring). This Court has explained that "the political-function exception must be narrowly construed; otherwise the exception will swallow the rule and depreciate the significance that should attach to the designation of a group as a 'discrete and insular' minority for whom heightened judicial solicitude is appropriate." *Bernal*, 467 U.S. at 222 n.7. The same is true of Congress's plenary power.

Judicial deference to legislation simply because it affects aliens "is not consistent with the theory of our government." *Wong Wing*, 163 U.S. at 237. The lower courts have ceded this boundary-patrolling function to the legislative and executive branches through their misreading of *Diaz*. This Court must return this power to the judicial branch to ensure that Congress and the President do not misuse their authority over immigration to single out legal immigrants for mistreatment

for reasons having nothing to do with immigration policy. Only this Court can tell Congress and the President that the plenary power over immigration does not give them plenary power over immigrants.

IV. CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

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Supreme Court, U.S.
FILED
FEB 25 2000

(6)

No. 99-898

In the Supreme Court of the United States

CITY OF CHICAGO, ET AL., PETITIONERS

v.

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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2099

QUESTION PRESENTED

Whether Sections 402 and 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1612 and 1613 (Supp. IV 1998), which restrict the eligibility of aliens for federal public assistance programs, contravene the equal protection component of the Due Process Clause of the Fifth Amendment.

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In the Supreme Court of the United States

No. 99-898

CITY OF CHICAGO, ET AL., PETITIONERS

v.

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 189 F.3d 598. The order of the district court (Pet. App. 22a-47a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 31, 1999. The petition for a writ of certiorari was filed on November 26, 1999. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case presents an equal-protection challenge to Sections 402 and 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

(PRWORA or Act), Pub. L. No. 104-193, 110 Stat. 2262-2265, 8 U.S.C. 1612, 1613 (Supp. IV 1998). The provisions at issue restrict the eligibility of aliens for federal public assistance programs, including the Supplemental Security Income (SSI) program, 42 U.S.C. 1381 *et seq.*; the food stamp program, 7 U.S.C. 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) program, 42 U.S.C. 601 *et seq.*; and Medicaid, 42 U.S.C. 1396 *et seq.*[1]

These restrictions are intended to implement Congress's "national policy with respect to welfare and immigration," stated in the text of the Act, especially the policy of "[s]elf-sufficiency," which has been "a basic principle of United States immigration law since this country's earliest immigration statutes." 8 U.S.C. 1601(1) (Supp. IV 1998). Congress further stated that

> [i]t continues to be the immigration policy of the United States that—
>
> (A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and

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[1] The Act sets forth several exceptions to that general exclusion. In particular, it makes clear that aliens are not made ineligible for numerous programs, such as the national school lunch program (see 42 U.S.C. 1751 *et seq.*), assistance under the Child Nutrition Act (see 42 U.S.C. 1771 *et seq.*), and federally funded immunization programs. See 8 U.S.C. 1613(c)(2) (Supp. IV 1998). See also pp. 4-5, *infra* (noting programs for which some classes of aliens remain eligible).

> (B) the availability of public benefits not constitute an incentive for immigration to the United States.

8 U.S.C. 1601(2) (Supp. IV 1998).

"Despite the principle of self-sufficiency," Congress concluded, "aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates," and "[c]urrent eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system." 8 U.S.C. 1601(3) and (4) (Supp. IV 1998). Congress therefore found that there are "compelling government interest[s]" in "enact[ing] new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy," and in "remov[ing] the incentive for illegal immigration provided by the availability of public benefits." 8 U.S.C. 1601(5) and (6) (Supp. IV 1998).

In accordance with these policy statements, the Act restricts the eligibility of aliens for specified federal benefit programs. Under Section 401 of the Act, any alien who is not a "qualified alien" is generally ineligible for "any Federal public benefit." 8 U.S.C. 1611(a) (Supp. IV 1998).[2] Section 402(a) of the Act provides that a "qualified alien" is generally ineligible for "any

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[2] The Act defines "qualified alien" to refer principally to aliens who are lawful permanent resident aliens, and also certain aliens who have been granted forms of relief such as asylum, withholding of deportation, and parole based on urgent humanitarian needs. See 8 U.S.C. 1641(b) (Supp. IV 1998). The restrictions on the receipt of federal benefits by aliens who are not "qualified aliens" are not at issue here. See Pet. App. 3a n.3.

specified Federal program," which term encompasses the SSI and federal food stamp programs. 8 U.S.C. 1612(a)(1) and (3) (Supp. IV 1998). Section 403(a) of the Act provides that a qualified alien who enters the United States on or after August 22, 1996, generally "is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the alien's entry into the United States with a status within the meaning of the term 'qualified alien.'" 8 U.S.C. 1613(a) (Supp. IV 1998). "Federal means-tested public benefits" include TANF and Medicaid. See 62 Fed. Reg. 45,257 (1997).[3]

Although the Act renders many aliens ineligible for federal assistance programs, Congress has also legislated several exceptions to that general rule. Benefits remain available to a qualified alien "lawfully admitted to the United States for permanent residence" who "has worked" or "can be credited" with "40 qualifying quarters of coverage as defined under title II of the Social Security Act." 8 U.S.C. 1612(a)(2)(B) and (b)(2)(B) (Supp. IV 1998). Benefits also remain available to a qualified alien who is a veteran with an honorable discharge who fulfills the minimum active duty-service requirements, an active-duty service member, or the spouse or the unmarried dependent child of such a veteran or active-duty service member. 8 U.S.C. 1612(a)(2)(C) and (b)(2)(C), 1613(b)(2) (Supp. IV 1998). Disabled and blind qualified aliens lawfully residing in the United States on August 22, 1996, and qualified

---

[3] Apart from the five-year restriction covering qualified aliens who entered the United States on or after August 22, 1996, the States are "authorized to determine the eligibility" of qualified aliens "for any designated Federal program[s]," including TANF and Medicaid. 8 U.S.C. 1612(b)(1) and (3) (Supp. IV 1998).

aliens lawfully residing in the United States who were receiving SSI benefits on August 22, 1996, remain eligible for SSI benefits. 8 U.S.C. 1612(a)(2)(E) and (F) (Supp. IV 1998).[4] Congress has also enacted legislation making the following qualified aliens eligible for food stamps, effective November 1, 1998: (1) disabled and blind aliens lawfully residing in the United States on August 22, 1996; (2) aliens who, on August 22, 1996, were lawfully residing in the United States and were at least 65 years old; and (3) children currently under 18 years old who were lawfully residing in the United States on August 22, 1996. 8 U.S.C. 1612(a)(2)(F), (I) and (J) (Supp. IV 1998).

2. Petitioners filed suit in district court, alleging that the Act's restrictions on the eligibility of lawful permanent resident aliens for federal benefits violate constitutional principles of equal protection. The district court dismissed the complaints. Pet. App. 22a-47a. Following this Court's decision in *Mathews* v. *Diaz*, 426 U.S. 67, 80 (1976), the district court upheld the restrictions on the ground that they are rationally related to legitimate governmental interests. See Pet. App. 44a-46a.

3. The court of appeals affirmed. Pet. App. 1a-21a. Like the district court, the court of appeals determined that the constitutionality of the challenged restrictions should be examined under the rational-basis standard set forth in *Diaz*. *Id.* at 8a-12a. The court rejected petitioners' reliance on *Graham* v. *Richardson*, 403 U.S. 365 (1971), which held that a state statute denying welfare benefits to a class of resident aliens should be

---

[4] Nonqualified aliens who were receiving SSI on August 22, 1996, also remain eligible for SSI. 8 U.S.C. 1611(b)(5) (Supp. IV 1998).

subjected to heightened scrutiny. The court of appeals noted that this Court in *Graham* "devoted several paragraphs of its opinion to distinguishing between state authority to make alienage-based classifications and federal authority to do so," Pet. App. 8a, and that *Diaz* also distinguished *Graham* "and explained that state and federal alienage classifications must be treated differently because of Congress' plenary authority to regulate the conditions of entry and residence of aliens," *id.* at 9a. That difference in the applicable standard of review, the court continued (*id.* at 10a), was not called into question by *Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200 (1995), which held that state and federal racial classifications are both subject to strict scrutiny. The court observed (Pet. App. 10a) that "*Adarand* itself acknowledged an exception to [the] general rule" requiring the same level of scrutiny for state and federal classifications "for cases in which special deference to the political branches of the federal government is appropriate," and also that *Adarand* cited (see 515 U.S. at 217-218) for that proposition *Hampton* v. *Mow Sun Wong*, 426 U.S. 88 (1976), a case involving federal exercise of the immigration power.

The court then upheld the challenged restrictions under the rational basis standard. Pet. App. 13a-21a. The court observed that the Act's restrictions on alien eligibility for federal public benefits are rationally related to several legitimate governmental purposes: encouraging aliens to rely on their own resources and those of their families, sponsors and private organizations, rather than the public fisc (*id.* at 15a); removing a possible incentive to immigrate in order to obtain welfare benefits (*id.* at 16a); reducing the escalating cost of funding federal benefits programs (*id.* at 16a-

17a); and encouraging noncitizens to naturalize (*id.* at 17a-18a).[5] The court acknowledged that the Act's restrictions might be overinclusive with respect to some of those legitimate interests (*id.* at 16a, 17a-18a), but, it emphasized, "rational basis scrutiny does not require a perfect fit between [the] legitimate governmental purpose and the means chosen to achieve it." *Id.* at 18a. The court also found no merit to petitioners' suggestion that the Act's restrictions were motivated by animus toward noncitizens. *Id.* at 18a-19a.

The court noted that the Act "contains a number of exceptions to its general exclusion of aliens from the welfare programs," but, it continued, those exceptions do not detract from "the rationality of the overall statutory scheme." Pet. App. 19a. Several of the exceptions "extend benefits to aliens who have made special contributions to this Country," *ibid.*, and other exceptions "ensure benefits to individuals who have sought refuge in this Country because of especially difficult conditions in their own countries," *id.* at 20a. "No doubt," the court remarked, "there is some question whether Congress included within the excepted class all those who should have been included. Drawing such lines, however, is a legislative task for Congress." *Ibid.*

ARGUMENT

The court of appeals correctly concluded that the PRWORA's restrictions on the eligibility of aliens for federal public benefits comport with constitutional principles of equal protection. That decision also does

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[5] The court of appeals observed (Pet. App. 17a) that the policy of encouraging aliens to naturalize is not expressly set forth in Congress's statement of policies in the PRWORA, but it nonetheless accepted that policy as legitimate and found it rationally related to the Act's restrictions on alien eligibility for benefits.

not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. The PRWORA's restrictions on the eligibility of certain classes of aliens for federal assistance represent a permissible exercise of Congress's constitutional authority over aliens. This Court has emphasized that Congress has broad power to draw distinctions on the basis of alienage. See, *e.g.*, *Mathews* v. *Diaz*, 426 U.S. 67, 78-80, 85 (1976). "For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Id.* at 81. "Since decisions in these matters may implicate our relations with foreign powers, and since a wide variety of classifications must be defined in the light of changing political and economic circumstances, such decisions are frequently of a character more appropriate to either the Legislature or the Executive than to the Judiciary." *Ibid.* Thus, the Court will uphold congressional classifications affecting aliens as long as they are not "wholly irrational." *Id.* at 83.

As the court of appeals recognized (Pet. App. 9a), *Diaz* is of particular relevance to this case. In *Diaz*, the Court rejected an equal-protection challenge to federal legislation that required aliens to be lawfully admitted for permanent residence and to reside in the United States for at least five years to qualify for certain Medicare benefits. 426 U.S. at 69-70. The Court sustained that restriction in light of Congress's broad power to regulate in the fields of immigration and naturalization. See *id.* at 78-84. The Court emphasized that "Congress has no constitutional duty to provide *all aliens* with the welfare benefits provided to citizens[.]" *Id.* at 82. And

the Court made clear that it is for Congress to determine which subgroups of aliens should receive "a share in the bounty that a conscientious sovereign makes available to its own citizens[.]" *Id.* at 80.

The Court assumed in *Diaz* that "the five-year line drawn by Congress [was] longer than necessary to protect the fiscal integrity of the [Medicare] program," and that "unnecessary hardship is incurred by persons just short of qualifying." 426 U.S. at 83. The Court stressed, however, that "[t]he task of classifying persons for medical benefits, like the task of drawing lines for federal tax purposes, inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line," and "the differences between the eligible and the ineligible are differences in degree rather than differences in the character of their respective claims." *Id.* at 83-84. "When this kind of policy choice must be made," the Court stated, "we are especially reluctant to question the exercise of congressional judgment." *Id.* at 84. Because neither of the requirements imposed by Congress was "wholly irrational," *id.* at 83, the Court sustained the legislation.

The court of appeals in this case therefore properly relied on *Diaz* when it applied the rational-basis standard to examine petitioners' equal-protection claim. Pet. App. 8a-12a. And, as the court properly determined (*id.* at 13a-18a), the challenged provisions of the Act are consistent with equal-protection principles, because they further several legitimate governmental interests: encouraging aliens to rely on their own resources and those of their families, sponsors and private organizations; reducing the costs of federal welfare programs; providing an incentive for aliens to become citizens; and removing a possible incentive to

immigrate to the United States in order to obtain welfare benefits. The court of appeals therefore correctly upheld the challenged restrictions under a straightforward application of *Diaz*.

2. Petitioners argue, however, that *Diaz* does not enunciate the proper standard for review of the challenged provisions of the Act. They maintain that the Act's restrictions should be subjected to heightened scrutiny, as this Court subjected a state restriction on aliens' eligibility for welfare benefits to heightened scrutiny in *Graham* v. *Richardson*, 403 U.S. 365 (1971). Petitioners contend that decisions after *Diaz*, notably *Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200 (1995), require the courts to apply the same standard of review to state and federal classifications of aliens, at least outside the context of admission and exclusion (Pet. 10-11); that the highly deferential standard articulated and applied in *Diaz* properly governs only congressional decisions concerning the admission and exclusion of aliens (Pet. 12); and that *Diaz* should be limited to its facts, as a case upholding a restriction to ensure the fiscal integrity of the Medicare program (Pet. 13-15). Those arguments are without merit.

a. As an initial matter, the Court in *Graham* clearly limited its holding to *state* legislation. See 403 U.S. at 376 (holding that "a state statute that denies welfare benefits to resident aliens" is unconstitutional); Pet. App. 8a. Indeed, one of the rationales in *Graham* for invalidating the state laws at issue was the *federal* government's exclusive authority over the regulation of immigration and naturalization. 403 U.S. at 377-380. As the Court explained, the state laws "conflict[ed] with the[] overriding national policies in an area constitutionally entrusted to the Federal Government." *Id.* at 378. That conflict rendered the state statutes

unconstitutional: "Since such laws encroach upon exclusive federal power, they are constitutionally impermissible." *Id.* at 380.

Further, in *Diaz*, which was decided after *Graham*, the Court made clear that federal legislation regulating benefits received by aliens after they have arrived in the United States is not subject to strict scrutiny. See 426 U.S. at 81-83. In so holding, the Court expressly distinguished *Graham*, explaining that the equal protection analysis in cases like *Graham* "involves singificantly different considerations because it concerns the relationship between aliens and the States rather than between aliens and the Federal Government." *Id.* at 84-85. The Court explained that, while there is little basis for a State to distinguish between persons who are citizens of another State from those who are citizens of another country, "a comparable classification by the Federal Government is a routine and normally legitimate part of its business." *Id.* at 85. See also *Plyler* v. *Doe*, 457 U.S. 202 (1982).

The Court's decision in *Adarand* did not change the standard of review applicable to federal legislation governing aliens. Petitioners argue that, under *Adarand*, the test for determining whether a statutory classification deprives a person of equal protection must be the same whether the classification is based in state or federal legislation. But *Adarand* did not involve immigration matters, nor did it involve classifications drawn between citizens and aliens or among classes of aliens. Moreover, in *Adarand*, the Court specifically recognized the "special deference" due to the political branches in cases involving federal authority over immigration matters, 515 U.S. at 217-218, and acknowledged an exception to the rule requiring the same standard of review for state and federal legislation

where such special deference is appropriate, *id.* at 218; see Pet. App. 10a. Nothing in *Adarand* suggests that the Court was overruling its prior holding in *Diaz*.[6]

b. Nor has this Court suggested that the deferential standard applied in *Diaz* to federal legislation is limited to decisions concerning the initial admission and exclusion of aliens. To the contrary, the Court has stressed that "[t]he National Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may re-

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[6] Nor, contrary to the suggestion of petitioners (Pet. 11), does *Saenz* v. *Roe*, 526 U.S. 489 (1999), require a different result. In *Saenz*, the Court stated that "Congress may not authorize the States to violate the Fourteenth Amendment." *Id.* at 507. In enacting restrictions on aliens' eligibility for federal benefits (even those administered by the States), Congress does not authorize the States to violate the Amendment; rather, Congress exercises its own constitutionally assigned responsibility governing the conduct of aliens in the United States. A deferential level of scrutiny is appropriate to congressional classifications affecting aliens because the text and structure of the Constitution place primary responsibility for regulating the conduct of aliens in the United States in Congress. Petitioners point out (Pet. 11) that the Court in *Graham* also stated that "Congress does not have the power to authorize the individual States to violate the Equal Protection Clause." 403 U.S. at 382. *Graham* did not hold, however, that Congress would not have had the authority to enact or authorize the state welfare restriction challenged in that case; it held, rather, that in light of what it regarded at the time as the serious constitutional questions that would be presented by such a holding, the Court would not construe the applicable federal statute to authorize those restrictions. See *ibid.* In this case, it is undisputed that the pertinent federal statutes do restrict the eligibility of aliens for public assistance benefits. The Court's decision in *Diaz*, which followed *Graham*, made clear that the standards governing judicial scrutiny of federal legislation affecting aliens are more deferential than those controlling judicial review of state legislation.

main, *regulation of their conduct before naturalization*, and the terms and conditions of their naturalization." *Graham*, 403 U.S. at 377 (emphasis added and internal quotation marks omitted). Congress's restrictions on aliens' eligibility for federal public benefits are properly viewed as a regulation of aliens' conduct in the United States. Congress declared that the national policy of immigration favors self-sufficiency on the part of aliens, which is obviously an aspect of the aliens' conduct while in the United States. See 8 U.S.C. 1601(1) (Supp. IV 1998). The restrictions may also be viewed as encouraging naturalization and discouraging immigration for the purpose of obtaining public benefits, see Pet. App. 17a, both of which are interests directly implicated in federal regulation of immigration and naturalization.[7]

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[7] Petitioners rely (Pet. 7, 12, 15) on *De Canas* v. *Bica*, 424 U.S. 351, 355 (1976), but that reliance is misplaced. In *De Canas*, the Court held that a state law that prohibited employers from knowingly employing illegal aliens "if such employment would have an adverse effect on lawful resident workers" was not prohibited state regulation of immigration, and was not preempted by federal law. *Id.* at 352-365. As the Court explained, although the "[p]ower to regulate immigration is unquestionably exclusively a federal power," that does not mean that "every state enactment which in any way deals with aliens is a regulation of immigration and thus *per se* pre-empted by this constitutional power[.]" *Id.* at 354-355. Because the challenged state law was consistent with federal immigration law, the Court stated, "absent congressional action," it was not "an invalid state incursion on federal power." *Id.* at 356. Thus, *De Canas* stands only for the proposition that courts will not automatically strike down every state statute that adversely affects some group of aliens, if there is no conflict between the state and federal law. *De Canas* does not suggest that the federal government's extensive power over aliens is limited to the power to make decisions about who should be permitted to immigrate.

c. Petitioners acknowledge that, in *Diaz*, this Court "relied on federal immigration powers to uphold legislation affecting no one's immigration status," but they attempt to distinguish *Diaz* on the ground that it involved a durational residence requirement for obtaining benefits under Medicare, which is an insurance program. Pet. 8. Petitioners argue that "[i]t is only appropriate—and actuarially sound—to require noncitizens to reside in this country and contribute to the program for some substantial period before they may receive the benefits of this insurance fund." *Ibid.* On that basis, petitioners claim that "*Diaz* should not be understood to rest on the federal immigration power, but rather on the long-settled rule that certain benefits can be denied to noncitizens when there is a 'special public interest' that demands that such benefits not be made available to citizens and noncitizens on an equal footing." *Ibid.*

Petitioners misread *Diaz*. The central issue in *Diaz* was not what type of benefit program was at issue, but whether Congress's broad power over immigration matters was implicated. See *Diaz*, 426 U.S. at 81-83. Moreover, petitioners' argument is at odds with the repeated references in *Diaz* to "welfare benefits" generally, as opposed to insurance programs in particular. See *id.* at 80, 81 n.20, 82, 84-85. The Court also emphasized Congress's power to distinguish between citizens and aliens (*id.* at 78-81), and noted that the deference owed to Congress's decisions on immigration matters "dictate[s] a narrow standard of review." *Id.* at 82. That principle of deference "has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government." *Fiallo* v. *Bell*, 430 U.S. 787, 792-793 n.4 (1977).

3. The decision below is consistent with the only decision of another court of appeals that has addressed the restrictions in the PRWORA on alien eligibility for federal public assistance benefits. See *Rodriguez* v. *United States*, 169 F.3d 1342, 1350 (11th Cir. 1999).[8] In *Rodriguez*, the court applied rational-basis review, relying squarely on *Diaz* (*id.* at 1346-1350), and also upheld the Act under that standard of review (*id.* at 1350-1352). The court also rejected the contention that the PRWORA reflects animus toward aliens (*id.* at 1352-1353). That decision is consistent with the decision of the court of appeals in this case. Further review is therefore not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 2000

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[8] Most district courts that have considered the issue have also upheld the restrictions on alien eligibility in the Act, as petitioners acknowledge (Pet. 16). A district court recently invalidated the Act insofar as it denies Medicaid coverage for prenatal medical care to otherwise eligible pregnant aliens, but it did so on the ground that the Act supposedly distinguishes among United States citizens (the children of the pregnant aliens) based on the alienage or citizenship status of their mothers. See *Lewis* v. *Grinker*, No. CV-79-1740 (CPS) (E.D.N.Y. Jan. 25, 2000), slip op. 71-85.

Supreme Court, U.S.
FILED
MAR 6 2000
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IN THE
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CITY OF CHICAGO, *et al.*,
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v.

DONNA E. SHALALA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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REPLY BRIEF FOR THE PETITIONERS

ARGUMENT

Respondents make no effort to justify the extraordinary harshness of the Welfare Reform Act. They do not contend that when Congress enacted the provisions of the Welfare Reform Act at issue here, it had before it evidence suggesting that the availability of welfare benefits undermines the self-sufficiency of noncitizens in particular, or that noncitizens were more likely than citizens to abuse the welfare system. Moreover, they acknowledge that noncitizens should be considered a discrete and insular minority entitled to special protection against discriminatory state and local legislation (Resp. Br. 10), and articulate no reason why Congress is less likely to engage in discriminatory overreaching against this vulnerable minority than are state or local legislatures. Rather,

respondents' submission is based exclusively on precedent, indeed on a single precedent: this Court's decision in *Mathews v. Diaz*, 426 U.S. 67 (1976).

Respondents' heavy reliance on *Diaz* is understandable —it is the only decision in this Court's history holding that legislation affecting no one's immigration status or ability to naturalize is nevertheless a permissible exercise of congressional authority over immigration. More important, at the time *Diaz* was decided, this Court had not yet determined the extent to which equal protection principles applied to federal legislation. That uncertainty ended with this Court's decision in *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995). After *Adarand*, the only relevant question is whether this case involves an area in which "special deference to the political branches of the Federal Government [is] appropriate." See *id.* at 217-18. Deference may well be appropriate when, as in *Diaz*, Congress determines that a durational residence requirement is necessary to protect the actuarial soundness of an insurance program, but no deference is warranted when Congress indulges in unfounded generalization about the propensity of noncitizens to abuse the welfare system. Plenary review is warranted to determine whether *Diaz* truly bears all of the weight that respondents, as well as Congress and the lower courts, have placed upon it.

1. Respondents believe that the provisions of the Welfare Reform Act at issue here should be sustained as long as they can be "properly viewed as a regulation of aliens' conduct in the United States." Resp. Br. 13. Of course, we acknowledge that Congress has broad authority over immigration and naturalization, see, *e.g.*, *Diaz*, 426 U.S. at 79-80, but the existence of legislative authority provides no warrant for excusing Congress from complying with the Bill of Rights. *Adarand* illustrates just this point.

Indeed, numerous cases have already held, in particular, that federal legislation that discriminates on the basis of citizenship must comply with the Bill of Rights. See, *e.g.*, *Landon v. Plascencia*, 459 U.S. 21, 32-35 (1982) (procedural due process applies to deportation proceedings); *Russian Volunteer Fleet v. United States*, 282 U.S. 481, 491-92 (1931) (Takings Clause protects foreign nationals); *Wong Wing v. United States*, 163 U.S. 228, 237 (1896) (Congress may not subject aliens to summary punishment).

It is true that the broadest language in *Diaz* suggests that Congress is immune from the equal protection principles that govern state and local legislation when it exercises its power over immigration. See 426 U.S. at 84-86. But at the time *Diaz* was decided, it was quite unclear whether equal protection principles applied to nationwide legislation with the same force that they apply to state legislation. See *Hampton v. Mow Sun Wong*, 426 U.S. 88, 100 (1976). After *Adarand*, Congress is entitled to special deference only when challenged legislation involves a question on which this Court finds "special deference to the political branches of the Federal Government to be appropriate." 515 U.S. at 217-18.

No doubt, many congressional judgments about noncitizens will qualify for special deference because they fall within Congress's unique competence to make policy about how to secure the nation's borders, conduct its foreign policy, or offer naturalization. But here, the only judgment Congress has articulated is that welfare should not be available to noncitizens because it undermines their incentives to work and their self-sufficiency. See 8 U.S.C. § 601 (Supp. II 1996).[1] We know from *Graham*

[1] Respondents also contend that the provisions of the Welfare Reform Act at issue here provide an incentive to naturalize. See

v. Richardson, 403 U.S. 365 (1971), that this Court will not defer to states' legislative judgments about noncitizens' welfare eligibility, see *id.* at 371-76, and there is no basis here to believe that Congress is any less likely to overreach at the expense of a discrete and insular minority when making judgments about the effects of welfare on recipients' incentives to work and self-sufficiency than are state and local governments. Indeed, the Welfare Reform Act reflects, at best, an overbroad and unfair generalization about noncitizens' supposed abuse of the welfare system. See Pet. 19-23. The court of appeals, however, never asked whether the legislative judgment at issue here was one on which deference to Congress was appropriate, feeling bound instead by the broadest language in *Diaz*. See Pet. App. 9a-11a. In light of *Adarand*, then, surely it is time to revisit this language in *Diaz*, and determine whether it can be squared with doctrinal developments since that case was decided.

2. In any event, respondents' view that the provisions of the Welfare Reform Act at issue here fall within the scope of congressional authority to regulate immigration is deeply suspect. Respondents suggest that enacting discriminatory legislation targeting noncitizens that would be unconstitutional if enacted by a state or local government and that affects no one's immigration status "is a routine and normally legitimate part of [Congress's] business." Resp. Br. 11 (quoting *Diaz*, 426 U.S. at 85). But aside from *Diaz*, no decision of this Court

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Resp. Br. 13. But as we explain in our petition, even putting aside Congress's failure to articulate this objective, the Welfare Reform Act is not a rational means to this end, since it disqualifies immigrants from welfare even when they are not yet eligible to naturalize. See Pet. 21 n.14. And in any event, as we explain above, Congress may not impose disabilities on noncitizens in contravention of the Bill of Rights merely because it wishes to provide an incentive to naturalize.

has ever upheld, by reference to congressional immigration powers, legislation that affects no one's immigration status. Nor do respondents even identify any similar legislation. As for *Diaz*, the insurance program at issue in that case presented a real problem, but one that was not peculiar to Congress's special competence over matters of immigration. As we explain in our petition, *Diaz* actually presented no question falling within Congress's unique competence over immigration matters, but rather the "special public interest" in ensuring the actuarial soundness of an insurance program through a durational residence requirement. See Pet. 14-15.

Particularly revealing is respondents' effort to bolster their position by reference to congressional regulatory power over aliens. Relying on *Graham*, respondents observe that "the Court has stressed that '[t]he national government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, *regulation of their conduct before naturalization*, and the terms and conditions of their naturalization.' " Resp. Br. 12-13 (quoting *Graham*, 402 U.S. at 377) (emphasis supplied by respondents). Respondents fail to explain, however, how the Welfare Reform Act regulates anyone's conduct. Being poor is not "conduct," and in any event the Act does not regulate impoverished immigrants. It does not render deportable or otherwise penalize noncitizens who become destitute, nor does it prohibit anyone from seeking welfare benefits from state or local governments, or from private charities. Congress's willingness to permit destitute noncitizens to remain in this country—even to be on welfare —as long as the economic and social burdens that they impose fall on state and local governments or private charities, is surely a peculiar "regulation" of the conduct

of noncitizens.[2] Indeed, we know from *DeCanas v. Bica*, 424 U.S. 351 (1976), that welfare eligibility laws do not amount to regulation of the conduct of aliens. As the Court explained in that case, such a view would have required the Court in *Graham* to have held that the state statutes at issue were preempted by the exclusive federal authority to regulate immigration and naturalization, rather than holding as it did that the state statutes violated equal protection. See *DeCanas*, 424 U.S. at 355.

3. In an effort to minimize the tension between their readings of *Diaz* and *Graham*, respondents claim that "the Court in *Graham* clearly limited its holding to *state* legislation." Resp. Br. 10 (emphasis in original). That view seriously mischaracterizes *Graham*.

The petitioners in *Graham* argued that the discriminatory state welfare legislation at issue had been authorized by Congress in the Social Security Act. See 403 U.S. at 380. The Court concluded, however, that even if the Social Security Act could be construed to authorize the state legislation at issue, that construction would not save it: "Although the Federal Government admittedly has broad constitutional power to determine what aliens shall be admitted to the United States, the period they may remain, and the terms and conditions of their naturalization Congress does not have the power to authorize the individual states to violate the Equal Pro-

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[2] It is particularly ironic that respondents rely on *Graham*, since in that case the Court held that Congress may not authorize the states to discriminate on the basis of citizenship. See 403 U.S. at 381-82. This is vivid evidence that not every federally imposed limitation on welfare eligibility is a permissible "regulation" of the conduct of noncitizens. We explore the tension between respondents' submission and *Graham* at greater length below.

tection Clause." *Id.* at 382.[3] But if respondents were correct that limitations on the eligibility of noncitizens for public benefits can be "properly viewed as a regulation of aliens' conduct" or "encouraging naturalization and discouraging immigration for the purpose of obtaining public benefits," Resp. Br. 13 (citation and footnote omitted), then *Graham* was incorrectly decided. After all, in *Graham* the Social Security Act's limitations on eligibility for federally funded welfare benefits could also have been viewed as regulating noncitizens' conduct, encouraging naturalization, and discouraging immigration for improper purposes. Nevertheless, the Court held that those purposes were insufficient to authorize discrimination against noncitizens.

In fact, *Graham* should control the Food Stamps, TANF, and Medicaid claims we make in this case. As we have explained, in *Graham* the Court held that Congress could not authorize the states to discriminate on the basis of citizenship when they administer federally funded welfare benefits. In the Welfare Reform Act, however, Congress authorized the states to reject applications from lawful permanent resident noncitizens who arrived in the country after August 22, 1996, when administering Food Stamps, TANF, and Medicaid. While SSI—the other program at issue here—is federally administered, we cannot see why Congress should have greater ability to discriminate on the basis of citizenship when it provides for the federal administration of a welfare program than when it provides for identical benefits to be distributed through state or local governments. Thus, the tension between

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[3] This proposition was reaffirmed only last Term, when this Court held that the provisions of the Welfare Reform Act purporting to authorize states to set welfare benefit levels that discriminate against new residents could not save that discrimination from equal protection attack. See *Saenz v. Roe*, 526 U.S. 489, 507 (1999).

Graham and the reading of *Diaz* that has been adopted by the lower courts, as well as Congress itself, warrants plenary review.

4. Perhaps most remarkably, respondents do not even attempt to justify the astonishing discrimination worked by the provisions of the Welfare Reform Act at issue here. Respondents make no effort to explain why the availability of welfare benefits undermines noncitizens' incentives to support themselves more than it affects citizens' incentives. Nor do they claim that noncitizens are more likely to abuse welfare benefits. As we explained in the petition, in fact the evidence is to the contrary. See Pet. 18-23. The only pertinent difference between citizens and noncitizens is the relative political powerlessness of the latter. That, of course, cannot be a permissible justification for discriminatory legislation. And respondents do not doubt the enormous human toll exacted by this discriminatory legislation, which we discuss in the petition and which the four amicus briefs supporting the petition explore in considerable detail.

What is more, the Welfare Reform Act's discrimination based on alienage is especially offensive because it undermines sound principles of cooperative federalism, about which respondents say not a word. Under the Welfare Reform Act, the Federal Government, while solely responsible for the presence in this country of lawful permanent resident noncitizens who become destitute, is able to impose on state and local governments the entire social and economic burdens associated with those individuals—it refuses to help support those individuals but will not authorize their deportation either. Surely a cooperative federalism would renounce that approach. When Congress alone has authorized the admission of noncitizens into this country, its discrimination against them in providing federally funded welfare benefits is an offense to federalism as well as equal protection.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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